



# BancBoston Leasing

October 3, 1988

8-278A090

Date OCT 4 1988

Fee \$ 13.00

ICC Washington, D. C.

The Honorable Noretta R. McGee  
Secretary

Interstate Commerce Commission

12th Street and Constitution Avenue  
Washington, DC 20423

RECORDATION NO. 1 5844

OCT 4 1988 1 25 PM

## INTERSTATE COMMERCE COMMISSION

Dear Ms. McGee:

We have enclosed an original and one certified copy of the primary document described below to be recorded pursuant to Section 11303 of Title 49 of the United States Code:

Master Lease Agreement dated September 28, 1988 between BancBoston Leasing Inc. (Lessor) and GWI Leasing Corporation (Lessee) with the following Exhibits and Riders thereto:  
Exhibit A - Equipment Schedule consisting of Equipment Schedules Nos. 1 and 2 each with Addendum 1 and Exhibit A to Addendum 1;  
Exhibit B - Certificate of Acceptance consisting of Certificates of Acceptance to each of Equipment Schedules Nos. 1 and 2; Rider No. 1 with Exhibit A and Schedule A to Exhibit A; and Rider No. 2.

This primary document is a lease. The names and addresses of the parties to the document are as follows:

Lessor: BancBoston Leasing Inc.  
100 Federal Street  
Boston, Massachusetts 02110

Lessee: GWI Leasing Corporation  
71 Lewis Street  
Greenwich, Connecticut 06830

OFFICE OF  
THE SECRETARY  
OCT 4 1 16 PM '88  
MOTOR OPERATING UNIT

A description of the equipment covered by the document follows:

- (384) 100 ton lined, covered hopper cars;
- (122) 100 ton Eastern coal open-top hopper cars;
- (25) all steel plain box cars
- (9) EMD Locomotives;
- (2) ALCO Locomotives.

A more complete description of the equipment covered by the document is set forth on the attached two Schedules of Equipment.

BancBoston Leasing Inc., 100 Federal Street, Boston, Massachusetts 02110

a BANK OF BOSTON company

G-268



## BancBoston Leasing

A fee of \$13.00 is enclosed. Please return the original document after recordation to BancBoston Leasing Inc., 100 Federal Street, Boston, Massachusetts 02110.

A short summary of the document to appear in the index follows:

"Lease between BancBoston Leasing Inc., 100 Federal Street, Boston, Massachusetts 02110 (Lessor) and GWI Leasing Corporation, 71 Lewis Street, Greenwich, Connecticut 06830 (Lessee) of the following equipment: (384) 100 ton lined covered hopper cars; (122) 100 ton Eastern coal open-top hopper cars; (25) all steel plain box cars and (11) Locomotives."

Very truly yours;  
BancBoston Leasing Inc.

By: James D. Digne, Asst. Vice President

Enclosures: Lease (Original plus one copy)  
Equipment Schedules (2)

EXHIBIT A

(74) 100 ton lined covered hopper cars marked GWIX, numbers: 97549-97551, 97553-97555, 97557, 97560, 97562, 97563, 97565-97567, 97569, 97571-97574, 97576, 97577, 97579, 97580, 97582, 97585, 97588, 97592, 97593, 97596, 97597, 97601, 97603, 97607, 97609, 97610, 97616-97618, 97621, 97624, 97628-97630, 97632-97635, 97637, 97638, 97640-97642, 97644, 97649-97653, 97655, 97657, 97659, 97660, 97662, 97663, 97665, 97667, 97670, 97674, 97675, 97678, 97681, 97682, 97692, 97694, 97695.

(25) 100 ton lined covered hopper cars marked GWIX, numbers: 97500-97506, 97510, 97517, 97522, 97525, 97527, 97530-97533, 97535, 97537, 97539-97544, 97546.

(41) 100 ton lined covered hopper cars marked GWIX, numbers: 944605, 944607, 944610-944616, 944618, 944621, 944623, 944624, 944629, 944630, 944632, 944634, 944635, 944639, 944641, 944643, 944644, 944645, 944646, 944648-944651, 944653, 944655, 944659, 944662-944664, 944666, 944668, 944671, 944674, 944678, 944679, 944683.

(21) 100 ton lined covered hopper cars marked GWIX, numbers: 944704, 944711, 944719, 944725, 944728, 944735, 944739, 944741, 944744, 944746, 944748-944750, 944752, 944753, 944755, 944758, 944759, 944762, 944766, 944769.

(20) 100 ton lined covered hopper cars marked GWIX, numbers 954402, 954404, 954405, 954412, 954415, 954417-954419, 954423, 954425, 954426, 954428, 954433, 954435, 954436, 954439, 954441, 954442, 954444, 954445.

→ (122) 100 ton eastern coal open top hopper cars marked RSR, numbers: 1001-1122.

(4) 100 ton lined covered hopper cars marked GWIX, numbers: 510003, 510005, 510006, 510008.

(6) EMD GP-40 Locomotives, numbers 101-106.

(2) EMD GP-38 Locomotives, numbers 50 & 51.

(1) EMD SW1500 Locomotive, number 47.

BancBoston Leasing Inc.

By *Dr. Hutchings*

Title \_\_\_\_\_

GWJ Leasing Corporation

By *William W. Hutchings*

Title *Treasurer*

EXHIBIT A

- (25) all steel plain box cars marked ICG, numbers: 503275-503299.  
(192) 100 ton lined covered hopper cars marked GWIX, numbers: 10000-10013, 10015-10032, 10034-10112, 10114-10127, 10129-10135, 10137-10140, 10142-10191, 10193-10196, 10198, 10199.  
(6) 100 ton lined covered hopper cars marked GWIX, numbers: 510001, 510002, 510004, 510007, 510009, 510010.  
(96) 100 ton lined covered hopper cars marked GWIX or GNWR, numbers: 810105-810115, 810206-810233, 810236-810272, 810274-810285, 810287-810294.  
(48) 100 ton lined covered hopper cars marked GWIX or GNWR, numbers: 102200-102209, 102211-102222, 102224-102249.  
(49) 100 ton lined covered hopper cars marked GWIX or GNWR, numbers: 610001-610043, 610045-610050.  
(2) Alco 424M Locomotives, numbers 62 & 63.

BancBoston Leasing Inc.

By

*W. H. Hutchings*

Title VICE PRESIDENT

GWJ Leasing Corporation

By

*W. H. Hutchings*

Title

Treasurer

**Interstate Commerce Commission**  
Washington, D.C. 20423

10/4/88

OFFICE OF THE SECRETARY

James D. Tighe  
Assist. Vice President  
Banc Boston Leasing  
100 Federal Street  
Boston, Massachusetts 02110

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/4/88 at 1:25pm, and assigned recordation number(s). 15844

Sincerely yours,

*Narita L. McEuen*  
Secretary

Enclosure(s)



**BancBoston Leasing**  
a BANK OF BOSTON company

# NON - STANDARD LEASE

## MASTER LEASE AGREEMENT

This MASTER LEASE AGREEMENT, dated as of the 28th day of September, 1988, ("Lease Agreement") is made at Boston, Massachusetts by and between BancBoston Leasing Inc. ("Lessor"), a Massachusetts corporation with its principal place of business at 100 Federal Street, Boston, Massachusetts 02110 and GWJ Leasing Corporation

RECORDATION NO. 5844

("Lessee"), a Delaware OCT 4 1988 1 23 PM corporation with its principal place of business at 71 Lewis Street, Greenwich, CT 06830

**INTERSTATE COMMERCE COMMISSION**

IN CONSIDERATION OF the mutual promises and covenants contained herein, Lessor and Lessee hereby agree as follows:

1. **Property Leased.** At the request of Lessee and subject to the terms and conditions of this Lease Agreement, Lessor shall lease to Lessee and Lessee shall lease from Lessor such personal property ("Equipment") as may be mutually agreed upon by Lessor and Lessee. The Equipment shall be selected by or ordered at the request of Lessee, identified in one or more equipment schedules substantially in the form of Exhibit A attached hereto ("Equipment Schedule") and accepted by Lessee in one or more certificates of acceptance ("Certificate of Acceptance") in the form of Exhibit B attached hereto. Each Equipment Schedule executed by Lessor and Lessee and each Certificate of Acceptance executed by Lessee shall constitute a part of this Lease Agreement.

### 2. Certain Definitions.

2.1 The "Acquisition Cost" shall mean the total cost of the Equipment paid by Lessor as set forth in the applicable Equipment Schedule.

2.2 The "Commencement Date" shall mean the date on which the Equipment identified in the applicable Equipment Schedule is accepted and placed in service by Lessee under this Lease Agreement. Each Commencement Date shall be evidenced by the Certificate of Acceptance applicable to such Equipment Schedule.

2.3 The "Rent Start Date" shall mean either (i) the first day of the month following the month in which the Commencement Date occurs or (ii) the Commencement Date, if the Commencement Date occurs on the first day of the month.

2.4 The "Monthly Rent" shall mean the amount set forth in the applicable Equipment Schedule as Monthly Rent for the Equipment identified on such Equipment Schedule.

2.5 The "Daily Rent" shall mean one-thirtieth (1/30) of the Monthly Rent.

2.6 The words "herein", "hereof", and "hereunder" shall refer to this Lease Agreement as a whole and not to any particular section. All other capitalized terms defined in this Lease Agreement shall have the meanings assigned thereto.

### 3. Initial Term of Lease; Payment of Rent.

3.1 The term of lease for the Equipment ("Initial Term") shall begin on the Commencement Date set forth in the applicable Certificate of Acceptance and shall continue during and until the expiration of the number of full calendar months set forth in the applicable Equipment Schedule, measured from the Rent Start Date. The Initial Term may not be cancelled or terminated except as set forth in Section 10.2 below.

3.2 At the expiration of the Initial Term, Lessor and Lessee may extend the lease of the Equipment for any period as they may agree upon in writing ("Extended Term") at the then fair market rental value of the Equipment, as determined in good faith by Lessor.

3.3 Aggregate Daily Rent shall be due and payable by Lessee on the Rent Start Date in an amount equal to the Daily Rent multiplied by the actual number of days elapsed from, and including, the Commencement Date to, but excluding, the Rent Start Date. The Monthly Rent shall be due and payable on the Rent Start Date and, thereafter on the first day of each month of the Initial Term or any Extended Term. All Daily Rents and Monthly Rents shall be paid to Lessor at its office in Boston, Massachusetts.

### 4. Acceptance of Equipment; Exclusion of Warranties.

4.1 Lessee shall signify its acceptance of the Equipment identified in the applicable Equipment Schedule by promptly executing and delivering to Lessor a Certificate of Acceptance. Lessee acknowledges that its execution and delivery of the Certificate of Acceptance shall conclusively establish, as between Lessor and Lessee, that the Equipment has been inspected by Lessee, is in good repair and working order, is of the design, manufacture and capacity selected by Lessee, and is accepted by Lessee under this Lease Agreement.

4.2 In the event the Equipment is ordered by Lessor from a manufacturer or supplier at the request of Lessee, Lessor shall not be required to pay the Acquisition Cost for such Equipment unless and until the applicable Certificate of Acceptance has been received by Lessor. Lessee hereby agrees to indemnify, defend and hold Lessor harmless from any liability to any manufacturer or supplier arising from the failure of Lessee to lease any Equipment which is ordered by Lessor at the request of Lessee or for which Lessor has assumed an obligation to purchase.

4.3 Lessor leases the Equipment to Lessee and Lessee leases the Equipment from Lessor "AS IS" and "WITH ALL FAULTS". Lessee hereby acknowledges that (i) Lessor is not a manufacturer, supplier or dealer of such Equipment nor an agent thereof; and (ii) LESSOR HAS NOT MADE, DOES NOT MAKE, AND HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT INCLUDING, BUT NOT LIMITED TO, ITS DESIGN, CAPACITY, CONDITION, MERCHANTABILITY, OR FITNESS FOR USE OR FOR ANY PARTICULAR PURPOSE. Lessee further acknowledges that Lessor is not responsible for any repairs, maintenance, service,

latent or other defects in the Equipment, or in the operation thereof, or for compliance of any Equipment with requirements of any laws, ordinances, governmental rules or regulations including, but not limited to, laws with respect to environmental matters, patent, trademark, copyright or trade secret infringement, or for any direct or consequential damages arising out of the use of or inability to use the Equipment.

4.4 Provided no Event of Default, as defined in Section 16 below, has occurred and is continuing, Lessor agrees to cooperate with Lessee, at the sole cost and expense of Lessee, in making any claim against a manufacturer or supplier of the Equipment arising from a defect in such Equipment. At the request of Lessee, Lessor shall assign to Lessee all warranties on the Equipment available from any manufacturer or supplier to the full extent permitted by the terms of such warranties and by applicable law.

#### **5. Ownership; Inspection; Maintenance and Use.**

5.1 The Equipment shall at all times be the sole and exclusive property of Lessor. Any Equipment subject to titling and registration laws shall be titled and registered by Lessee on behalf of and in the name of Lessor at the sole cost and expense of Lessee. Lessee shall cooperate with and provide Lessor with any information or documents necessary for titling and registration of the Equipment. Upon the request of Lessor, Lessee shall execute any documents or instruments which may be necessary or appropriate to confirm, to record or to give notice of the ownership of the Equipment by Lessor including, but not limited to, financing statements under the Uniform Commercial Code. Lessee, at the request of Lessor, shall affix to the Equipment, in a conspicuous place, any label, plaque or other insignia supplied by Lessor designating the ownership of the Equipment by Lessor.

5.2 The Equipment shall be located at the address specified in the applicable Equipment Schedule and shall not be removed therefrom without the prior written consent of Lessor. Lessor, its agents or employees shall have the right to enter the premises of Lessee, upon reasonable notice and during normal business hours, for the purpose of inspecting the Equipment.

5.3 Lessee shall pay all costs, expenses, fees and charges whatsoever incurred in connection with the use and operation of the Equipment. Lessee shall, at all times and at its own expense, keep the Equipment in good repair and working order, reasonable wear and tear excepted. Any maintenance contract required by a manufacturer or supplier for the care and upkeep of the Equipment shall be entered into by Lessee at its sole cost and expense. Lessee shall permit the use and operation of the Equipment only by personnel authorized by Lessee and shall comply with all laws, ordinances or governmental rules and regulations relating to the use and operation of the Equipment.

6. *Alterations and Modifications.* Lessee may make, or cause to be made on its behalf, any improvement, modification or addition to the Equipment with the prior written consent of Lessor, provided, however, that such improvement, modification or addition is readily removable without causing damage to or impairment of the functional effectiveness of the Equipment. To the extent that such improvement, modification or addition is not so removable, it shall immediately become the property of Lessor and thereupon shall be considered Equipment for all purposes of this Lease Agreement.

#### **7. Quiet Enjoyment; No Defense, Set-Offs or Counterclaims.**

7.1 Provided no Event of Default, as defined in Section 16 below, has occurred and is continuing, Lessee shall have the quiet enjoyment and use of the Equipment in the ordinary course of its business during the Initial Term or any Extended Term without interruption by Lessor or any person or entity claiming through or under Lessor.

7.2 Lessee acknowledges and agrees that ANY DAMAGE TO OR LOSS, DESTRUCTION, OR UNFITNESS OF, OR DEFECT IN THE EQUIPMENT, OR THE INABILITY OF LESSEE TO USE THE EQUIPMENT FOR ANY REASON WHATSOEVER, SHALL NOT (i) GIVE RISE TO ANY DEFENSE, COUNTERCLAIM, OR RIGHT OF SET-OFF AGAINST LESSOR, OR (ii) PERMIT ANY ABATEMENT OR RECOUPMENT OF, OR REDUCTION IN DAILY OR MONTHLY RENT, OR (iii) RELIEVE LESSEE OF THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS LEASE AGREEMENT INCLUDING, BUT NOT LIMITED TO, ITS OBLIGATION TO PAY THE FULL AMOUNT OF DAILY RENT AND MONTHLY RENT, WHICH OBLIGATIONS ARE ABSOLUTE AND UNCONDITIONAL, unless and until this Lease Agreement is terminated with respect to such Equipment in accordance with the provisions of Section 10.2 below. Any claim that Lessee may have which arises from a defect in or deficiency of the Equipment shall be brought solely against the manufacturer or supplier of the Equipment and Lessee shall, notwithstanding any such claim, continue to pay Lessor all amounts due and to become due under this Lease Agreement.

#### **8. Adverse Claims and Interests.**

8.1 Except for any liens, claims, mortgages, pledges, encumbrances or security interests created by Lessor, Lessee shall keep the Equipment, at all times, free and clear from all liens, claims, mortgages, pledges, encumbrances and security interests and from all levies, seizures and attachments. Without limitation of the covenants and obligations of Lessee set forth in the preceding sentence, Lessee shall immediately notify Lessor in writing of the imposition of any prohibited lien, claim, levy or attachment on or seizure of the Equipment at which time Lessee shall provide Lessor with all relevant information in connection therewith.

8.2 Lessee agrees that the Equipment shall be and at all times shall remain personal property. Accordingly, Lessee shall take such steps as may be necessary to prevent any person from acquiring, having or retaining any rights in or to the Equipment by reason of its being affixed or attached to real property.

#### **9. Indemnities; Payment of Taxes.**

9.1 Lessee hereby agrees to indemnify, defend and hold harmless Lessor, its agents, employees, successors and assigns from and against any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities whatsoever arising out of or in connection with the manufacture, ordering, selection, specifications, availability, delivery, titling, registration, rejection, installation, possession, maintenance, ownership, use, leasing, operation or return of the Equipment including, but not limited to, any claim or demand based upon any STRICT OR ABSOLUTE LIABILITY IN TORT and upon any infringement or alleged infringement of any patent, trademark, trade secret, license, copyright or otherwise. All costs and expenses incurred by Lessor in connection with any of the foregoing including, but not limited to, reasonable legal fees, shall be paid by Lessee on demand.

9.2 Lessee hereby agrees to indemnify, defend and hold Lessor harmless against all Federal, state and local taxes, assessments, licenses, withholdings, levies, imposts, duties, assessments, excise taxes, registration fees and other governmental fees and charges whatsoever, which are imposed, assessed or levied on or with respect to the Equipment or its use or related in any way to this Lease Agreement ("Tax Assessments"), except for taxes on or measured by the net income of Lessor determined substantially in the same manner as under the Internal Revenue Code of 1986, as amended. Lessee shall file all returns, reports or other such documents required in connection with the Tax Assessments and shall provide

Lessor with copies thereof. If, under local law or custom, Lessee is not authorized to make the filings required by a taxing authority, Lessee shall notify Lessor in writing and Lessor shall thereupon file such returns, reports or documents. Without limiting any of the foregoing, Lessee shall indemnify, defend and hold Lessor harmless from all penalties, fines, interest payments, claims and expenses including, but not limited to, reasonable legal fees, arising from any failure of Lessee to comply with the requirements of this Section 9.2.

9.3 The obligations and indemnities of Lessee under this Section 9 for events occurring or arising during the Initial Term or any Extended Term shall continue in full force and effect, notwithstanding the expiration or other termination of this Lease Agreement.

#### 10. Risk of Loss; Loss of Equipment.

10.1 Lessee hereby assumes and shall bear the entire risk of loss for theft, damage, seizure, condemnation, destruction or other injury whatsoever to the Equipment from any and every cause whatsoever. Such risk of loss shall be deemed to have been assumed by Lessee from and after such risk passes from the manufacturer or supplier by agreement or pursuant to applicable law.

10.2 In the event of any loss, seizure, condemnation or destruction of the Equipment or damage to the Equipment which cannot be repaired by Lessee, Lessee shall immediately notify Lessor in writing. Within thirty (30) days of such notice, during which time Lessee shall continue to pay Monthly Rent, Lessee shall, at the option of Lessor, either (i) replace the Equipment with equipment of the same type and manufacture and in good repair, condition and working order, transfer title to such equipment to Lessor free and clear of all liens, claims and encumbrances, whereupon such equipment shall be deemed Equipment for all purposes of this Lease Agreement, or (ii) pay to Lessor an amount equal to the present value of both the aggregate of the remaining unpaid Monthly Rents and the anticipated residual value of the Equipment plus any other costs actually incurred by Lessor. Lessor and Lessee agree that the residual value of the Equipment at the expiration of the Initial Term is reasonably anticipated to be not less than twenty (20) percent of the Acquisition Cost of the Equipment. The present value shall be determined by discounting the aggregate of the remaining unpaid Monthly Rents and the anticipated residual value of the Equipment to the date of payment by Lessee at the rate of five (5) percent per annum. When and as requested by Lessor, Lessee shall also pay to Lessor amounts due pursuant to Section 18 below, if any, arising as a result of the loss, seizure, replacement, condemnation or destruction of the Equipment. Any insurance or condemnation proceeds received by Lessor shall be credited to the obligation of Lessee under this Section 10.2 and the remainder of such proceeds, if any, shall be paid to Lessee by Lessor in full compensation for the loss of the leasehold interest in the Equipment by Lessee.

10.3 Upon any replacement of or payment for the Equipment as provided in Section 10.2 above, this Lease Agreement shall terminate only with respect to the Equipment so replaced or paid for, and Lessor shall transfer to Lessee title only to such Equipment "AS IS," "WITH ALL FAULTS", and WITH NO WARRANTIES WHATSOEVER, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR USE OR FOR ANY PARTICULAR PURPOSE. Lessee shall pay any sales or use taxes due on such transfer.

#### 11. Insurance.

11.1 Lessee shall keep the Equipment insured against all risks of loss or damage from every cause whatsoever occurring during the Initial Term, or any Extended Term for an amount not less than the higher of the full replacement value of the Equipment or the aggregate of unpaid Daily Rent and Monthly Rent for the balance of the Initial Term, or the Extended Term. Lessee shall also carry public liability insurance, both personal injury and property damage, covering the Equipment, and Lessee shall be liable for any deductible portions of all required insurance.

11.2 All insurance required under this Section 11 shall name Lessor as additional insured and loss payee. Such insurance shall also be with such insurers and shall be in such forms and amounts as are satisfactory to Lessor. All applicable policies shall provide that no act, omission or breach of warranty by Lessee shall give rise to any defense against payment of the insurance proceeds to Lessor. Lessee shall pay the premiums for such insurance and, at the request of Lessor, deliver to Lessor duplicates of such policies or other evidence satisfactory to Lessor of such insurance coverage. In any event, Lessee shall provide Lessor with endorsements upon the policies issued by the insurers which evidence the existence of insurance coverage required by this Section 11 and by which the insurers agree to give Lessor written notice at least twenty (20) days prior to the effective date of any expiration, modification, reduction, termination or cancellation of any such policies.

11.3 The proceeds of insurance required under this Section 11 and payable as a result of loss or damage to the Equipment shall be applied as set forth in Section 10.2 above. Upon the occurrence of an Event of Default as defined in Section 16 below, Lessee hereby irrevocably appoints Lessor as its attorney-in-fact, which power shall be deemed coupled with an interest, to make claim for, receive payment of, execute and endorse all documents, checks or drafts received in payment for loss or damage under any insurance policies required by this Section 11.

11.4 Notwithstanding anything herein, Lessor shall not be under any duty to examine any evidence of insurance furnished hereunder, or to ascertain the existence of any policy or coverage, or to advise Lessee of any failure to comply with the provisions of this Section 11.

12. **Surrender To Lessor.** Immediately upon the expiration of the Initial Term or any Extended Term or at any other termination of this Lease Agreement, Lessee shall surrender the Equipment to Lessor in good repair and working order, reasonable wear and tear excepted, by assembling and delivering the Equipment, ready for shipment, to a place or carrier, as Lessor may designate, within the state in which the Equipment was originally delivered to Lessee or to which the Equipment was thereafter moved with the written consent of Lessor. All costs of removal, assembly, packing and delivery of such Equipment to the place designated by Lessor shall be borne by Lessee.

13. **Fair Market Value Purchase Option.** Lessor hereby grants to Lessee the option to purchase all, but not less than all, Equipment set forth on any Equipment Schedule at the expiration of the applicable Initial Term or Extended Term. Any such purchase shall be for cash in an amount equal to the then fair market value of such Equipment, as determined in good faith by Lessor. This purchase option may be exercised by Lessee, provided that no Event of Default, as defined in Section 16 below, has occurred and is continuing. Lessee shall notify Lessor in writing of its intention to exercise its purchase option at least thirty (30) days prior to the expiration of the Initial Term or any Extended Term. Upon payment of the fair market value by Lessee to Lessor, Lessor shall transfer title to the Equipment to Lessee "AS IS", "WITH ALL FAULTS", and WITH NO WARRANTIES WHATSOEVER, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR USE OR FOR ANY PARTICULAR PURPOSE.

14. **Financial Statements.** Lessee shall annually, within ninety (90) days after the close of the fiscal year for Lessee, furnish to Lessor financial statements of Lessee, including a balance sheet as of the close of such year and statements of income and retained earnings for such year, prepared in accordance with generally accepted accounting principles, consistently applied from year to year, and certified by independent public accountants for Lessee. If requested by Lessor, Lessee shall also provide quarterly financial statements of Lessee, similarly prepared for each of the first three



quarters of each fiscal year, certified (subject to normal year-end audit adjustments) by the chief financial officer of Lessee and furnished to Lessor within sixty (60) days following the end of the quarter, and such other financial information as may be reasonably requested by Lessor.

15. **Delayed Payment Charge.** Lessee shall pay to Lessor interest upon the amount of any Daily Rent, Monthly Rent or other sums not paid by Lessee when due and owing under this Lease Agreement, from the due date thereof until paid, at the rate of one and one half (1-1/2) percent per month, but if such rate violates applicable law, then the maximum rate of interest allowed by such law.

16. **Default.**

16.1 The occurrence of any of the following events shall constitute an event of default ("Event of Default") under this Lease Agreement.

- (a) Lessee fails to pay any Daily Rent or any Monthly Rent when due and such failure to pay continues for ten (10) consecutive days; or
- (b) Lessee fails to pay any other sum required hereunder, and such failure continues for a period of ten (10) days following written notice from Lessor; or
- (c) Lessee fails to maintain the insurance as required by Section 11 above and such failure continues for ten (10) days after written notice from Lessor; or
- (d) Lessee violates or fails to perform any other term, covenant or condition of this Lease Agreement or any other document, agreement or instrument executed pursuant hereto or in connection herewith, which failure is not cured within thirty (30) days after written notice from Lessor; or
- (e) Lessee ceases to exist or terminates its independent operations by reason of any discontinuance, dissolution, liquidation, merger, sale of substantially all of its assets, or otherwise ceases doing business as a going concern; or
- (f) Lessee (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or similar official for itself or for all or a substantial part of its property, (ii) is generally not paying its debts as such debts become due, (iii) makes a general assignment for the benefit of its creditors, (iv) commences a voluntary case under the United States Bankruptcy Code, as now or hereafter in effect, seeking liquidation, reorganization or other relief with respect to itself or its debts, (v) files a petition seeking to take advantage of any other law providing for the relief of debtors, (vi) takes any action under the laws of its jurisdiction of incorporation or organization similar to any of the foregoing, or (vii) takes any corporate action for the purpose of effecting any of the foregoing; or
- (g) A proceeding or case is commenced, without the application or consent of Lessee, in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, dissolution, winding up of Lessee or composition or readjustment of the debts of Lessee, (ii) the appointment of a trustee, receiver, custodian, liquidator or similar official for Lessee or for all or any substantial part of its assets, or (iii) similar relief with respect to Lessee under any law providing for the relief of debtors; or an order for relief is entered with respect to Lessee in an involuntary case under the United States Bankruptcy Code, as now or hereafter in effect, or an action under the laws of the jurisdiction of incorporation or organization of Lessee, similar to any of the foregoing, is taken with respect to Lessee without its application or consent; or
- (h) Lessee makes any representation or warranty herein or in any statement or certificate at any time given in writing pursuant to or in connection with this Lease Agreement, which is false or misleading in any material respect; or
- (i) Lessee defaults under any promissory note, credit agreement, loan agreement, conditional sales contract, guaranty, lease, indenture, bond, debenture or other material obligation whatsoever, and a party thereto or a holder thereof is entitled to accelerate the obligations of Lessee thereunder; or Lessee defaults in meeting any of its trade, tax or other current obligations as they mature, unless such obligations are being contested diligently and in good faith; or
- (j) Any party to any guaranty, letter of credit, subordination or credit agreement or other undertaking, given for the benefit of Lessor and obtained in connection with this Lease Agreement, breaches, fails to continue, contests, or purports to terminate or to disclaim such guaranty, letter of credit, subordination or credit agreement or other undertaking; or such guaranty, letter of credit, subordination agreement or other undertaking becomes unenforceable; or a guarantor of this Lease Agreement shall die, cease to exist or terminate its independent operations.

16.2 No waiver by Lessor of any Event of Default shall constitute a waiver of any other Event of Default or of the same Event of Default at any other time.

17. **Remedies.**

17.1 Upon the occurrence of an Event of Default and while such Event of Default is continuing, Lessor, at its sole option, upon its declaration, and to the extent not inconsistent with applicable law, may exercise any one or more of the following remedies:

- (a) Lessor may terminate this Lease Agreement whereupon all rights of Lessee to the quiet enjoyment and use of the Equipment shall cease;
- (b) Whether or not this Lease Agreement is terminated, Lessor may cause Lessee, at the sole cost and expense of Lessee, to return any or all of the Equipment promptly to the possession of Lessor in good repair and working order, reasonable wear and tear excepted. Lessor, at its sole option and through its employees, agents or contractors, may peaceably enter upon the premises where the Equipment is located and take immediate possession of and remove the Equipment, all without liability to Lessor, its employees, agents or contractors for such entry. LESSEE HEREBY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHTS TO NOTICE AND/OR HEARING PRIOR TO THE REPOSSESSION OR REPLEVIN OF THE EQUIPMENT BY LESSOR, ITS EMPLOYEES, AGENTS OR CONTRACTORS;
- (c) Lessor may proceed by court action to enforce performance by Lessee of this Lease Agreement or pursue any other remedy Lessor may have hereunder, at law, in equity or under any applicable statute, and recover such other actual damages as may be incurred by Lessor;
- (d) Lessor may recover from Lessee damages, not as a penalty but as liquidation for all purposes and without limitation of any other amounts due from Lessee under this Lease Agreement, in an amount equal to the sum of (i) any unpaid Daily Rents and/or Monthly Rents due and payable for periods prior to the repossession of the Equipment by Lessor plus any interest due thereon pursuant to Section 15 above, (ii) the present value of all future Monthly Rents required to be paid over the remaining Initial Term or any Extended Term after repossession of the

Equipment by Lessor, determined by discounting such future Monthly Rents to the date of payment by Lessee at a rate of five (5) percent per annum, and (iii) all costs and expenses incurred in searching for, taking, removing, storing, repairing, restoring, refurbishing and leasing or selling such Equipment; or

(e) Lessor may sell, lease or otherwise dispose of any or all of the Equipment, whether or not in the possession of Lessor, at public or private sale and with or without notice to Lessee, which notice is hereby expressly waived by Lessee, to the extent permitted by and not inconsistent with applicable law. Lessor shall then apply against the obligations of Lessee hereunder the net proceeds of such sale, lease or other disposition, after deducting therefrom (i) the present value of the residual value of the Equipment at the expiration of the Initial Term, which is anticipated by Lessor and Lessee to be not less than twenty (20) percent of the Acquisition Cost, such present value to be determined by discounting the residual value to the date of sale, lease or other disposition at a rate of five (5) percent per annum, and (ii) all costs incurred by Lessor in connection with such sale, lease or other disposition including, but not limited to, costs of transportation, repossession, storage, refurbishing, advertising or other fees. Lessee shall remain liable for any deficiency, and any excess of such proceeds over the total obligations owed by Lessee shall be retained by Lessor. If any notice of such sale, lease or other disposition of the Equipment is required by applicable law, ten (10) days written notice to Lessee shall be deemed reasonable.

17.2 No failure on the part of Lessor to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof. No single or partial exercise of any right or remedy hereunder shall preclude any other or further exercise thereof or the exercise of any other right or remedy. Each right and remedy provided hereunder is cumulative and not exclusive of any other right or remedy including, without limitation, any right or remedy available to Lessor at law, by statute or in equity.

17.3 Lessee shall pay all costs and expenses including, but not limited to, reasonable legal fees incurred by Lessor arising out of or in connection with any Event of Default or this Lease Agreement. Lessee shall also be liable for any amounts due and payable to Lessor under any other provision of this Lease Agreement including, but not limited to, amounts due and payable under Section 18 below.

#### **18. Tax Indemnification.**

18.1 Lessee represents and warrants that the Equipment is and will remain, during the entire Initial Term and any Extended Term, property used in a trade or business or for the production of income within the meaning of Section 167 of the Internal Revenue Code of 1986, as amended ("Code"). Lessee further acknowledges and agrees that, pursuant to the Code, Lessor or its affiliated group, as defined in Section 1504 of the Code ("Affiliated Group"), shall be entitled to deductions for the recovery of the Acquisition Cost of the Equipment over the recovery period as set forth in the applicable Equipment Schedule, using the Accelerated Cost Recovery System as provided by Section 168 (b) (1) of the Code ("ACRS Deductions").

18.2 If as a result of any reason or circumstance whatsoever, except as specifically set forth in Section 18.3 below, Lessor or its Affiliated Group shall not be entitled to, shall not be allowed, shall suffer recapture of or shall lose any ACRS Deductions, then Lessee shall pay to Lessor, upon demand, a sum to be computed by Lessor in the following manner. Such sum, after deduction of all federal, state and local income taxes payable by Lessor as a result of the receipt of such sum, shall be sufficient to restore Lessor or its Affiliated Group to substantially the same position, on an after-tax basis, as it would have been in but for the loss of such ACRS Deductions. In making its computation, Lessor or its Affiliated Group shall consider, but shall not be limited to, the following factors: (i) the amounts and timing of any net loss of tax benefits resulting from any such lack of entitlement to or loss, recapture, or disallowance of ACRS Deductions but offset by any tax benefits derived from any depreciation or other capital recovery deductions or exclusions from income allowed to Lessor or its Affiliated Group with respect to the same Equipment; (ii) penalties, interest or other charges imposed; (iii) differences in tax years involved; and (iv) the time value of money at a reasonable rate determined, in good faith, by Lessor. For purposes of computation only, the amount of indemnification payments hereunder shall be calculated on the assumption that Lessor and its Affiliated Group have or will have, in all tax years involved, sufficient taxable income and the tax liability to realize all tax benefits and incur all losses of tax benefits at the highest marginal Federal corporate income tax rate in each year. Upon request, Lessor shall provide Lessee with the methods of computation used in determining any sum that may be due and payable by Lessee under this Section 18.

18.3 Lessee shall not be obligated to pay any sums required under this Section 18 in the event that lack of entitlement to, or loss, recapture or disallowance of any ACRS Deductions results from one or more of the following events: (i) a disqualifying disposition due to the sale of the Equipment by Lessor when no Event of Default, as defined in Section 16 above, has occurred, (ii) a failure of Lessor or its Affiliated Group to timely claim any ACRS Deductions for the Equipment in its tax return, and/or (iii) the fact that Lessor or its Affiliated Group does not have, in any taxable year or years, sufficient taxable income or tax liability to realize the benefit of any ACRS Deductions that are otherwise allowable to Lessor or its Affiliated Group.

18.4 The representations, obligations and indemnities of Lessee under this Section 18 shall continue in full force and effect, notwithstanding the expiration or other termination of this Lease Agreement.

#### **19. Assignment; Sublease.**

19.1 Lessor may sell, assign or otherwise transfer all or any part of its right, title and interest in and to the Equipment and/or this Lease Agreement to a third-party assignee, subject to the terms and conditions of this Lease Agreement including, but not limited to, the right to the quiet enjoyment of the Equipment by Lessee as set forth in Section 7.1 above. Such assignee shall assume all of the rights and obligations of Lessor under this Lease Agreement and shall relieve Lessor therefrom. Thereafter, all references to Lessor herein shall mean such assignee. Notwithstanding any such sale, assignment or transfer, the obligations hereunder shall remain absolute and unconditional as set forth in Section 7.2 above.

19.2 Lessor may also pledge, mortgage or grant a security interest in the Equipment and assign this Lease Agreement as collateral. Each such pledgee, mortgagee, lienholder or assignee shall have any and all rights as may be assigned by Lessor but none of the obligations of Lessor hereunder. Any pledge, mortgage or grant of security interest in the Equipment or assignment of this Lease Agreement shall be subject to the terms and conditions hereof including, but not limited to, the right to the quiet enjoyment of the Equipment by Lessee as set forth in Section 7.1 above. Lessor, by reason of such pledge, mortgage, grant of security interest or collateral assignment, shall not be relieved of any of its obligations hereunder which shall remain absolute and unconditional as set forth in Section 7.2 above. Upon the written request of Lessor, Lessee shall acknowledge such obligations to the pledgee, mortgagee, lienholder or assignee.

19.3 LESSEE SHALL NOT SELL, TRANSFER, ASSIGN, SUBLEASE, CONVEY OR PLEDGE ANY OF ITS INTEREST IN THIS LEASE AGREEMENT OR ANY OF THE EQUIPMENT, WITHOUT THE PRIOR WRITTEN CONSENT OF LESSOR. Any such sale, transfer, assignment, sublease,

conveyance or pledge, whether by operation of law or otherwise, without the prior written consent of Lessor, shall be void.

20. *Optional Performance By Lessor.* If an Event of Default, as defined in Section 16 above, occurs and is continuing, Lessor in its sole discretion may pay or perform such obligation in whole or in part, without thereby becoming obligated to pay or to perform the same on any other occasion or to pay any other obligation of Lessee. Any payment or performance by Lessor shall not be deemed to cure any Event of Default hereunder. Upon such payment or performance by Lessor, Lessee shall pay forthwith to Lessor the amount of such payment or an amount equal to all costs and expenses of such performance, as well as any delayed payment charges on such amounts as set forth in Section 15 above.

21. *Compliance and Approvals.* Lessee warrants and agrees that this Lease Agreement and the performance by Lessee of all of its obligations hereunder have been duly authorized, do not and will not conflict with any provision of the charter or bylaws of Lessee or of any agreement, indenture, lease or other instrument to which Lessee is a party or by which Lessee or any of its property is or may be bound. Lessee warrants and agrees that this Lease Agreement does not and will not require any governmental authorization, approval, license or consent except those which have been duly obtained and will remain in effect during the entire Initial Term and any Extended Term.

22. *Miscellaneous.*

22.1 The section headings are inserted herein for convenience of reference and are not part of and shall not affect the meaning or interpretation of this Lease Agreement.

22.2 Any provision of this Lease Agreement which is unenforceable in whole or in part in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such unenforceability without invalidating any remaining part or other provision hereof and shall not be affected in any manner by reason of such enforceability in any other jurisdiction. The validity and interpretation of this Lease Agreement and the rights and obligations of the parties hereto shall be governed in all respects by the laws of The Commonwealth of Massachusetts without giving effect to the conflicts of laws provisions thereof.

22.3 This Lease Agreement, including all Equipment Schedules and Certificates of Acceptance, constitutes the entire agreement between Lessor and Lessee. Lessor and Lessee agree that this Lease Agreement shall not be amended, altered or changed except by a written agreement signed by the parties hereto. LESSEE ACKNOWLEDGES THAT THERE HAVE BEEN NO REPRESENTATIONS, EXPRESS OR IMPLIED, BY LESSOR OTHER THAN AS SET FORTH HEREIN AND LESSEE EXPRESSLY CONFIRMS THAT IT HAS NOT RELIED UPON ANY REPRESENTATIONS BY LESSOR, EXCEPT THOSE SET FORTH HEREIN, AS A BASIS FOR ENTERING INTO THIS LEASE AGREEMENT.

22.4 Any notice required to be given by Lessee or Lessor hereunder shall be deemed adequately given if sent by registered or certified mail, return receipt requested, to the other party at their respective addresses stated herein or at such other place as either party may designate in writing to the other.

22.5 Lessee agrees to execute and deliver such additional documents and to perform such further acts as may be reasonably requested by Lessor in order to carry out and effectuate the purposes of this Lease Agreement. Upon the written request of Lessor, Lessee further agrees to execute any instrument necessary for filing or recording this Lease Agreement or to confirm the ownership of the Equipment by Lessor. Lessor is hereby authorized to insert in any Equipment Schedule the serial numbers of the Equipment and other identifying marks or similar information and to sign, on behalf of Lessee, any Uniform Commercial Code financing statements.

22.6 This Lease Agreement cannot be cancelled or terminated except as expressly provided herein.

22.7 Whenever the context of this Lease Agreement requires, the singular includes the plural and the plural includes the singular. Whenever the word Lessor is used herein, it includes all assignees and successors in interest of Lessor. If more than one Lessee are named in this Lease Agreement, the liability of each shall be joint and several.

22.8 All agreements, indemnities, representations and warranties of Lessee made herein and all rights and remedies of Lessor shall survive the expiration or other termination of this Lease Agreement, whether or not expressly provided herein.

22.9 Any waiver of any power, right, remedy or privilege of Lessor hereunder shall not be effective unless in writing signed by Lessor.

22.10 This Lease Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Lessor and Lessee, each by its duly authorized officer or agent, have duly executed and delivered this Lease Agreement, which is intended to take effect as a sealed instrument, as of the day and year first written above.

\_\_\_\_\_  
GWI Leasing Corporation

By \_\_\_\_\_

Title \_\_\_\_\_

Accepted at Boston, Massachusetts

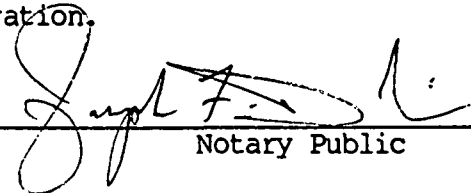
BANCOSTON LEASING INC.

By \_\_\_\_\_

Title \_\_\_\_\_ VICE PRESIDENT

STATE OF MASSACHUSETTS  
COUNTY OF SUFFOLK

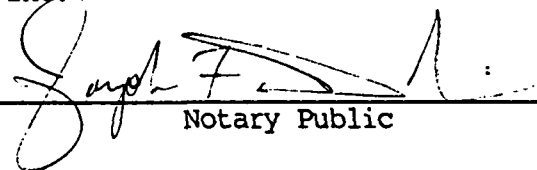
On the 30th day of September, 1988, before me personally came Mark W. Hastings, who is known to me to be an officer of GWI Leasing Corporation and who, being duly sworn, did depose and say that he/she executed this document in his/her capacity as an officer of GWI Leasing Corporation by authority conferred by its by-laws and he/she acknowledged said document to be the free act and deed of GWI Leasing Corporation.

  
\_\_\_\_\_  
Notary Public

My commission expires on 12/14/91

STATE OF MASSACHUSETTS  
COUNTY OF SUFFOLK

On the 30th day of September, 1988, before me personally came David L. Hitchings, who is known to me to be an officer of BancBoston Leasing Inc. and who, being duly sworn, did depose and say that he/she executed this document in his/her capacity as an officer of BancBoston Leasing Inc. by authority conferred by its by-laws and he/she acknowledged said document to be the free act and deed of BancBoston Leasing Inc.

  
\_\_\_\_\_  
Notary Public

My commission expires on 12/14/91

RIDER NO. 1

TO

MASTER LEASE AGREEMENT

This Rider No. 1 (the "Rider") is entered into between BancBoston Leasing Inc. (the "Lessor") and GWI Leasing Corporation (the "Lessee"), is contemporaneous with and amends the Master Lease Agreement dated the 28th day of September, 1988 (the "Lease Agreement") between Lessor and Lessee. It is the intention of Lessor and Lessee that, upon execution, this Rider shall constitute a part of the Lease Agreement.

IN CONSIDERATION OF the mutual covenants and promises as hereinafter set forth, Lessor and Lessee hereby agree as follows:

1. All capitalized terms used in this Rider shall, unless otherwise defined, have the meanings set forth in the Lease Agreement.

2. Delete Section 5 of the Lease Agreement and insert the following:

"5. RECORDING; IDENTIFICATION MARKS; COMPLIANCE; MAINTENANCE

"5.1 Recording. Lessee, at its own expense, will cause this Lease Agreement, including all Riders and Equipment Schedules thereto, to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. Section 11303. Lessee, at its own expense, will cooperate with Lessor in causing this Lease Agreement and/or appropriate financing statements or continuation statements to be filed and recorded and, when required, refiled and rerecorded, in accordance with the applicable provisions of the Uniform Commercial Code as in effect in the State of Connecticut and in any other state of the United States of America or the District of Columbia reasonably requested by the Lessor for the purpose of proper protection of its ownership of the Equipment or its interest in this Lease Agreement. Lessee, in addition, will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by Lessor for the purpose of protecting its ownership of the Equipment, or its interest in this Lease Agreement. Lessee will promptly furnish to Lessor evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for Lessee with respect thereto satisfactory to Lessor. This Lease Agreement shall be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. Section 11303 prior to the delivery and acceptance hereunder of any item of Equipment.

"5.2 Identifying Numbers; Legend; Changes. Lessee will cause the Equipment to be kept numbered with the identification number as shall be set forth on the applicable Equipment Schedule. Within a reasonable period of time after the Commencement Date and when the Equipment becomes available without interruption of Lessee's normal operations (with the understanding that some of the Equipment is used by other railroads and such Equipment may not be marked until returned to Lessee), Lessee will mark plainly, distinctly,

permanently and conspicuously on each side of each item of Equipment, in letters not less than one inch in height, the words "OWNED BY BANCOSTON LEASING INC. AND LEASED PURSUANT TO A LEASE FILED WITH THE INTERSTATE COMMERCE COMMISSION" or other appropriate words designated by Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect Lessor's ownership of the Equipment and its interest in this Lease Agreement. Lessee will maintain and promptly replace any such words which may be removed, defaced, obliterated or destroyed. Lessee shall not change the identification number of any item of Equipment unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with Lessor and filed, recorded and deposited by Lessee in all public offices where this Lease Agreement shall have been filed, recorded and deposited and (ii) Lessee shall have furnished Lessor an opinion of counsel in form and substance reasonably satisfactory to Lessor to the effect that such filing, recordation and deposit will effect a perfected security interest in the Equipment.

"5.3 Insignia of Lessee. The Equipment may be lettered with the names or initials or other insignia customarily used by Lessee or its permitted sublessees but Lessee will not allow the name of any other person, association or corporation to be placed on any Equipment which might be interpreted as a claim of ownership.

"5.4 Compliance. Lessee agrees, for the benefit of Lessor, to comply, or to insure compliance, in all material respects, (including, without limitation, with respect to the use, maintenance and operation of each item of Equipment), with all laws of the jurisdiction in which the Equipment is operated, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Federal Railroad Administration, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation, maintenance or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of, or to, any part of any item of Equipment, Lessee will conform therewith at its own expense; provided, however, that Lessee may, at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not adversely affect the property or rights of Lessor under this Lease Agreement or result in any liability, criminal or otherwise, on the part of Lessor.

"5.5 Reports by Lessee. Lessee agrees to prepare and file on behalf of Lessor any and all reports required to be filed with any Federal, state or other regulatory authority in connection with the Equipment or the leasing thereof. In the event any such report must be filed by Lessor, Lessee shall prepare and deliver to Lessor any such report within a reasonable time prior to the required date of filing. Lessor agrees to inform Lessee of any request for such reports received by it.

"5.6 Inspection. Lessor, its agents or employees, shall have the right to inspect the Equipment at any time, and from time to time, upon reasonable notice.

"5.7 Maintenance. Lessee agrees that, at its own cost and expense, it will maintain and keep each item of Equipment (including, without limitation, any linings, parts installed on, or replacements made to, any item of Equipment and considered an accession thereto as herein provided) in good operating order, repair and condition as when originally delivered to Lessee (except for those items of Equipment identified on the applicable Equipment Schedules whose linings are required to be repaired or replaced by Lessee after the Commencement Date), ordinary wear and tear expected, with due consideration being given to the age of the Equipment on the Commencement Date and the service in which such items are used. Notwithstanding the foregoing and without limiting Lessor's rights under Section 12, items of Equipment subject to the salt service may exhibit normal, but not excessive, lining corrosion for the amount of time such item was used in a corrosive service. All items of Equipment shall be maintained in conformity with the safety and mechanical standards of the Association of American Railroads and the Federal Railroad Administration, or any successor thereof, and eligible for railroad interchange in accordance with the interchange rules of the Association of American Railroads for Class 1 railroads or other applicable regulatory body, and in at least as good condition as prevailing industry standards. Lessee further agrees to make available to Lessor all logs, records and reports related to the maintenance of the Equipment."

3. Delete Section 6 of the Lease Agreement and insert the following:

"6. ALTERATIONS AND MODIFICATIONS.

"6.1 Optional Additions and Modifications. Lessee, at its own cost and expense, may from time to time make such additions, modifications and improvements to the Equipment during the term of this Lease Agreement as are readily removable without causing material damage to the Equipment (and do not adversely and materially affect the value or utility of the Equipment). The additions, modifications and improvements made by the Lessee under preceding sentence shall be owned by Lessee, except to the extent such additions, modifications or improvements are made in order to comply with Section 6.2 hereof.

"6.2 Required Additions and Modifications. The following parts installed on, and additions and replacements made to, any Equipment shall constitute accessions to the Equipment ("Accessions"): (i) parts, additions or replacements which are not readily removable without causing material damage to the Equipment; (ii) parts, additions or replacements which were installed or were added to such Equipment in contravention of Lessee's agreements contained in Section 6.1; (iii) parts, additions or replacements the cost of which are included in the Acquisition Cost; (iv) parts, additions or replacements, which are made or installed in the course of ordinary maintenance of the Equipment; or (v) parts, additions or replacements which are required by the interchange rules of the Association of

American Railroads or by the regulations of the Interstate Commerce Commission, the Department of Transportation, the Federal Railroad Administration, or any other applicable regulatory body, for the operation or use of the Equipment in railroad interchange. Full ownership of all Accessions shall immediately be vested in Lessor, free from any lien, charge, security interest or encumbrance, and Lessee shall comply with all provisions of Section 5.1 hereof applicable to such Accessions."

4. In line 3 of Section 10.2 of the Lease Agreement, delete the phrase "...at the option of Lessor..." and insert "...at the option of Lessee..."

5. In the first sentence of Section 11.1 of the Lease Agreement, delete the words beginning with "...the higher of the replacement value..." to the end of the sentence and insert the following "...the Stipulated Loss Value applicable to the Equipment during the Initial Term."

6. In line 2 of Section 11.2 of the Lease Agreement, between the words "...are satisfactory..." insert the word "...reasonably..." and, at the end of the first sentence, insert the following before the period: "...and Lessor shall acknowledge its acceptance of such insurance prior to the Commencement Date..."

7. Delete Section 12 and insert the following:

"12. SURRENDER TO LESSOR.

"12.1 Surrender. Lessee shall notify Lessor sixty (60) days prior to the expiration of the Initial Term or any Extended Term of this Lease Agreement of its intention to return the Equipment to Lessor. Upon such expiration, Lessee shall return each item of Equipment to Lessor in a condition as hereinafter set forth, by causing all Equipment to be moved, at Lessee's sole cost and expense, to storage tracks owned by Lessee's affiliates in New York and Pennsylvania. All Equipment must be moved onto such storage tracks or facilities at the expiration of the Initial Term or any Extended Term of this Lease Agreement or a prior termination thereof. Lessee shall pay Lessor Daily Rent on all Equipment not moved onto such storage tracks or facilities for each day after the expiration of this Lease Agreement that such Equipment is not on such storage tracks or facilities. All storage fees payable for storage on tracks or facilities shall be paid by Lessee for a sixty (60) day period after the expiration of the Initial Term or any Extended Term and, for any period in excess of such sixty (60) days, Lessor shall reimburse Lessee for such fees. Any fees charged to Lessor shall not exceed fees charged to other parties using such storage tracks or facilities and, in any event, shall not exceed the fair market value for such usage. Any Equipment not delivered in accordance with this Section shall continue to be subject to all of the terms and conditions of this Lease Agreement. During the storage period, Lessor shall reimburse Lessee for the reasonable cost for any insurance with respect to the Equipment on the basis that such Equipment shall be stored and not operating. Lessee will permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Equipment, to inspect the same.



Each item of Equipment returned to Lessor pursuant to this Section shall (i) be in the same operating order, repair and condition as when originally delivered (except for those items of Equipment identified on Exhibit B attached hereto whose linings are required to be repaired or replaced by Lessee after the Commencement Date and which shall be surrendered in an improved condition from that in which it was originally delivered) to Lessee, reasonable wear and tear excepted, with due consideration being given to the age of the items of Equipment on the Commencement Date and the service in which such items are used, provided that, without limiting any of Lessee's obligations under this Section 12, items of Equipment subject to the salt service may exhibit normal, but not excessive, lining corrosion for the amount of time such items were used in a corrosive service, (ii) meet all of the safety and mechanical standards then in effect required by the Association of American Railroads, the Department of Transportation, the Federal Railroad Association, the Interstate Commerce Commission or any successor entity, (iii) be in a marketable condition for the services intended, (iv) in a condition suitable for normal interchange service with other Class 1 railroads in compliance with the Interchange Rules of the Association of American Railroads and/or the applicable rules of any government agency or other organization with jurisdiction then in effect, (v) have each major component, part, improvement, modification thereof operational and functional, (vi) have attached or affixed thereto any special device considered an Accession thereto as provided in Section 6 hereof and have removed therefrom any such device not so considered an Accession and (vii) maintained in accordance with all of the terms and conditions of this Lease Agreement. In addition, and without limiting any of the foregoing, each railcar constituting an item of Equipment shall (A) have been used during the entire Initial Term and any Extended Term only for the transportation of bulk commodities including but not limited to grain, coal, salt, cement and related services and (B) be empty, clean and in a condition which permits it to be used for the transport of items normally transported by railcars of similar type and age. Upon surrender, the average life of the linings of the railcars constituting items of Equipment shall not exceed four (4) years and Lessee shall be required to pay to Lessor, upon surrender, one half of Lessor's reasonable replacement cost for any lining with a life in excess of 5.25 years, whether or not Lessor incurs such cost. During any such storage period, Lessee shall maintain the Equipment in such manner as the Lessee normally maintains similar units of railroad equipment owned or leased by it in similar storage circumstances. The maintenance, assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease Agreement, and upon application to any court of equity having jurisdiction in the premises, Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee hereunder. All net amounts earned in respect of the Equipment after the expiration of the Initial Term or any Extended Term hereof shall belong to Lessor, and shall be paid over forthwith to Lessor.

"12.2 Return of Equipment Upon an Event of Default. Upon the occurrence of an Event of Default and in accordance with the remedies available to Lessor pursuant to Section 17, Lessee shall forthwith

deliver possession of the Equipment to Lessor. Each item of Equipment so delivered shall be in the condition as set forth below, shall comply with all laws and rules referred to in Section 5, and shall have attached or affixed thereto any addition, modification or improvement considered an Accession thereto as provided in Section 6 hereof and shall have removed in a workmanlike manner therefrom, if so requested by Lessor and at Lessee's expense, (i) any addition, modification or improvement which, as provided in Section 5 hereof, is owned by the Lessee and (ii) any insignia permitted pursuant to Section 5. Notwithstanding the foregoing, each item of Equipment shall (i) be in the same operating order, repair and condition as when originally delivered (except for those items of Equipment identified on Exhibit B attached hereto whose linings are required to be repaired or replaced by Lessee after the Commencement Date and which shall be surrendered in an improved condition from that in which it was originally delivered) to Lessee, reasonable wear and tear excepted, with due consideration being given to the age of the items of Equipment on the Commencement Date and the service in which such items are used, provided that, without limiting any of Lessee's obligations under this Section 12, items of Equipment subject to the salt service may exhibit normal, but not excessive, lining corrosion for the amount of time such item was used in a corrosive service, (ii) meet all of the safety and mechanical standards then in effect required by the Association of American Railroads, the Department of Transportation, the Federal Railroad Association, the Interstate Commerce Commission or any successor entity, (iii) be in a marketable condition for the services intended, (iv) in a condition suitable for normal interchange service with other Class 1 railroads in compliance with the Interchange Rules of the Association of American Railroads and/or the applicable rules of any government agency or other organization with jurisdiction then in effect, (v) have each component, part, improvement, modification thereof operational and functional, and (vi) have attached or affixed thereto any special device considered an Accession thereto as provided in Section 6 hereof and have removed therefrom any such device not so considered an Accession and (vii) maintained in accordance with all of the terms and conditions of this Lease Agreement. In addition, and without limiting any of the foregoing, each railcar constituting an item of Equipment shall (A) have been used during the entire Initial Term and any Extended Term only for the transportation of bulk commodities including but not limited to grain, coal, salt, cement and related services, and (B) be empty, clean and in a condition which permits it to be used for the transport of items normally transported by railcars of similar type and age. Upon surrender, the average life of the linings of the railcars constituting items of Equipment shall not exceed four (4) years and Lessee shall be required to pay to Lessor, upon surrender, one half of Lessor's reasonable replacement cost for any lining with a life in excess of 5.25 years, whether or not Lessor incurs such cost. For the purpose of delivering possession of the Equipment as required above, Lessee shall, at its own cost and expense;

(a) forthwith and in the usual manner (including, but not by way of limitation, to the extent legally required by applicable law, rules or regulations to protect the Lessor's interest in the Equipment,

giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any item of Equipment has interchanged or which may have possession thereof to return the Equipment) place such Equipment upon such storage tracks as Lessor may designate;

(b) cause such Equipment to be stored on such tracks at the risk of Lessee without charge to Lessor, for insurance, rent or storage until the earlier of (i) the date all such Equipment has been sold, leased or otherwise disposed of by Lessor or (ii) 120 days from the date all Equipment is stored on tracks as directed by Lessor and available to be sold, leased or otherwise disposed of by Lessor; and

(c) cause the same to be transported to any reasonable place within 1000 miles of Retsof, New York.

The maintenance, assembling, delivery, storage, insurance and transporting of the Equipment as provided herein shall be at the expense and risk of Lessee and are of the essence of this Lease Agreement. Upon application to any court of equity having jurisdiction in the premises, Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to maintain, assemble, deliver, store and transport the Equipment. During any storage period, Lessee will, at its own cost and expense, maintain and keep the Equipment in the manner set forth in Sections 5 and 12 hereof and permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or other user of any Equipment, to inspect the same. All amounts earned in respect of the Equipment after the date of termination of this Lease Agreement as a result of an Event of Default shall belong to Lessor and, if received by Lessee, shall be promptly turned over to Lessor. In the event any Equipment is not assembled, delivered and stored, as hereinabove provided, Lessee shall, in addition, pay to Lessor for each day thereafter an amount equal to the Daily Rent.

"12.2 Lessor Appointed Agent of Lessee. Without in any way limiting the obligation of Lessee under the foregoing provisions of this Section 12, Lessee hereby irrevocably appoints Lessor as the agent and attorney of Lessee, with full power and authority, at any time while Lessee is obligated to deliver possession of any Equipment to Lessor, to demand and take possession of such Equipment in the name and on behalf of Lessee from whoever shall be in possession of such Equipment at the time."

8. Delete Section 13 of the Lease Agreement, and insert the following:

"13. FAIR MARKET VALUE PURCHASE OPTION.

"13.1 Purchase Option. Lessor hereby grants to Lessee the option to purchase all, but not less than all, Equipment leased pursuant to this Lease Agreement at the expiration of the applicable Initial Term or any Extended Term. Any such purchase shall be for cash in an amount equal to the lower of (i) the anticipated average fair market value of all Equipment which average Lessor and Lessee agree is

twenty-five (25) percent of the Acquisition Cost of all Equipment, such percentage being applied to the average fair market value of all Equipment and not the fair market value of any individual item of Equipment, or (ii) the average fair market value of all Equipment at the end of the Initial Term or any Extended Term as determined in good faith by Lessor.

"13.2 Appraisal. For purposes of subsection (ii) of Section 13.1, the term, fair market value ("Fair Market Value"), shall mean the selling price that would be obtained in an arms-length transaction between an informed and willing seller and an informed and willing buyer, each under no compulsion to sell or to buy, and neither of whom is the manufacturer of the Equipment. In determining the Fair Market Value, the costs of removal from the location of current use shall not be a deduction from the Fair Market Value. For purposes of such determination, it shall also be assumed that the Equipment has been maintained in accordance with the requirements of Section 5.7 of the Lease Agreement and would have been surrendered to Lessor in compliance with the requirements of Section 12 of the Lease Agreement.

"In the event Lessee does not agree with the Fair Market Value as determined in good faith by Lessor, Lessee may request, in writing ninety (90) days prior to the end of the Initial Term or any Extended Term, that the Fair Market Value be determined by a qualified independent appraiser. Such appraiser must be mutually acceptable to Lessor and Lessee but may not be the manufacturer of the Equipment. The decision of the appraiser shall be binding on the parties. If Lessor and Lessee are unable to agree on an appraiser within five (5) days of the date Lessee requests an appraisal, the determination of the Fair Market Value shall be made by a panel of three (3) qualified independent appraisers, none of whom may be the manufacturer of the Equipment. One appraiser shall be selected by Lessor, the other by Lessee, and the third by the first two appraisers so selected. The panel of appraisers shall be selected within fifteen (15) days of the date Lessee requests an appraisal. The decision of each appraiser shall be given within sixty (60) business days after the selection of the panel. The average of the appraisals arrived at by the three appraisers shall be conclusively binding on Lessor and Lessee as the Fair Market Value of the Equipment. The expenses and fees of any appraisal shall be paid by Lessee."

9. Delete Section 14 of the Lease Agreement and insert the following:

"14. FINANCIAL STATEMENTS; FINANCIAL DEFINITIONS; FINANCIAL COVENANTS.

"14.1 Financial Statements. Lessee shall annually, within one hundred twenty (120) days after the close of the fiscal year for Lessee, furnish to Lessor financial statements of Lessee, including a balance sheet as of the close of such year and statements of income and retained earnings for such year, prepared in accordance with generally accepted accounting principles, consistently applied from year to year, and certified by the chief financial officer of Lessee and used by the independent public accountants of Genessee & Wyoming Industries, Inc. to prepare the latter's consolidated financial

statements. Lessee shall also provide quarterly financial statements, similarly prepared for each of the first three quarters of each fiscal year, certified (subject to normal year-end audit adjustments) by the chief financial officer of Lessee and furnished to Lessor within forty-five (45) days following the end of the quarter, and such other financial information as may be reasonably requested by Lessor. Concurrently with the submission of the quarterly financial statements, Lessee shall also submit a report substantially in the form of Exhibit A attached hereto signed on behalf of Lessee by the chief financial officer of Lessee.

"14.2 Financial Definitions. The following defined terms shall have the meanings assigned:

(a) "Debt" shall mean: (i) all indebtedness or liability for borrowed money or other extensions of credit, or for the deferred purchase price of property or services, including trade obligations, whether any of the foregoing are subordinated or otherwise; (ii) obligations as lessee under leases which have fixed terms in excess of two years; (iii) current liabilities with respect to unfunded vested benefits under plans covered by Title IV of the Employee Retirement Income Security Act of 1974; (iv) all guaranties, endorsements, other than for collection or deposit in the ordinary course of business, and other contingent obligations to purchase, to provide funds for payment, to supply funds to invest in any person or entity, or otherwise to assure a creditor against loss; and (vii) obligations secured by any mortgage, lien, pledge, or security interest or other charge or encumbrance on property, whether or not the obligations have been assumed but excluding obligations deemed by Lessor to be non-recourse obligations.

(b) "Tangible Net Worth" shall mean the excess of total assets over total liabilities, total assets and total liabilities each to be determined in accordance with generally accepted accounting principles consistently applied excluding, however, from the determination of total assets: (i) all assets which would be classified as intangible assets under generally accepted accounting principles including, without limitation, goodwill, patents, trademarks, trade names, copyrights, franchises, and research and development expenses except pre-paid expenses; (ii) assets located outside of the United States; (iii) deferred charges, treasury stock and sinking funds; (iv) all reserves not already deducted from assets; (v) the value of any minority interest in subsidiaries; and (vi) the revaluation and write-up of assets occurring after the Commencement Date.

(c) "Cash Flow Coverage" shall mean, at any date as of which the amount thereof shall be determined and for the period specified, the quotient obtained by dividing the total of (i) earnings from continuing operations before income taxes of Lessee for such period, excluding any nonrecurring or extraordinary items included in such consolidated earnings, plus, (ii) depreciation, amortization expenses, operating lease expenses, interest expense (including imputed interest on capital lease obligations), and amortized debt discount (collectively, "Interest Expense") less any interest income

for such period, by the total of (i) Interest Expense of Lessee for such period, plus (ii) current maturities of any Debt of Lessee for such period, plus (iii) any other principal repayment on Debt, plus (iv) any dividend declared and paid by Lessee.

"14.3 Financial Covenants. During the Initial Term, Lessee represents, covenants and agrees:

(i) to maintain a Debt to Tangible Net Worth ratio not in excess of: 4.0 for calendar year 1988 and for each succeeding calendar year of the Initial Term;

(ii) to maintain Cash Flow Coverage of: 1.7 for calendar year 1988, provided, however, that the definition of Cash Flow Coverage shall not include, for purposes of calculation for calendar year 1988 only, any principal repayment of Debt; 1.1 for calendar year 1989; and 1.3 for calendar year 1990 and for each succeeding calendar year of the Initial Term;

(iii) not to make any loans or advances or other extensions of credit, however characterized, to its parent corporation which aggregate in excess of \$200,000 during the entire Initial Term unless such loans or advances or other extensions of credit in excess of such \$200,000 are evidenced by a binding and enforceable note with full recourse to such parent corporation; and

(iv) not to make any loans or advances or other extensions of credit, however characterized, to any subsidiary or affiliate other than its parent corporation in accordance with the provisions of subsection (iii) above."

10. In Section 16.1(a) of the Lease Agreement, delete the words "...consecutive days..." and insert the words "...consecutive business days following written notice from Lessor..."

11. In Section 16.1(b) of the Lease Agreement, delete the words "...ten (10) days..." and insert the words "...ten (10) business days..."

12. In Section 16.1(c) of the Lease Agreement, delete the words "...ten (10) days..." and insert the words "...ten (10) business days

13. In line 2 of Section 16.1(d) of the Lease Agreement, after words "...from Lessor...", add the following:

"...unless such failure cannot be reasonably cured within 30 days and Lessee is diligently seeking to perform, provided, however, that (i) such failure to perform will not, in the reasonable opinion of Lessor, adversely affect Lessor's title to or interest in the Equipment or will not create a risk of loss or forfeiture of the Equipment during the extended cure period and (ii) such failure is cured within ninety (90) days after written notice from Lessor, provided further, however, that in the event Lessee shall fail to perform a covenant contained in Section 14.3 of this Lease Agreement, Lessee shall not be entitled to any cure period; or..."

14. In line 1 of Section 16.1(g) of the Lease Agreement, after the words "...consent of Lessee..." insert the following: "...and which is not dismissed or discharged within sixty (60) days..." In line 6, after the word "...consent..." insert the following: "...and which is not dismissed or discharged within sixty (60) days..."

15. In line 2 of Section 16.1(h) of the Lease Agreement, between the words "...is false...", insert the words "...,in any material respect,..." and delete the words "...in any material respect..." appearing after the word "...misleading..."

16. In line 1 of Section 16.1(i), between the words "...any promissory..." insert the word "...material..." In line 2, after the word "...whatsoever..." insert the following: "... (provided that all applicable cure periods have elapsed and such default has not been waived) ..." In line 3, between the words "...its trade...", insert the word "...material..." In line 4, after the words "...good faith..." insert the following: "... (provided that all applicable cure periods have elapsed and such default has not been waived) ..."

17. In line 6 of Section 17.1(d) of the Lease Agreement, delete the words "...five (5) percent..." and insert the following "...at the discount rate ("Discount Rate") set forth on the applicable Equipment Schedule..."

18. In line 2 of Section 17.1(e) of the Lease Agreement, delete the words "...or without..." and the words "...which notice is hereby expressly waived by Lessee..."

19. In line 4 of Section 22.2 of the Lease Agreement, delete the words "...The Commonwealth of Massachusetts..." and insert the words "...the State of New York..."

20. At the end of Section 22 of the Lease Agreement, add the following as Section 23.

"23. UNITED STATES BANKRUPTCY CODE. To the extent consistent with the provisions of 11 USC 1168 or any analogous section of the United States Bankruptcy Code (as now or hereafter in effect), it is expressly agreed that the title of Lessor to the Equipment, and any right of Lessor to take possession of the Equipment in compliance with the provisions of this Lease Agreement, shall not be affected by the provisions of the United States Bankruptcy Code (as now or hereafter in effect)."

IN WITNESS WHEREOF, Lessor and Lessee, by their duly authorized representatives, have executed and delivered this Rider which is intended to take effect as a sealed instrument as of the date of the Lease Agreement.

GWI LEASING CORPORATION

By: *Wallace Keating*

Title: Treasurer

Accepted at Boston, Massachusetts

BancBoston Leasing Inc..

By: *D. K. Hutchings*

Title: VICE PRESIDENT

#832



GWI LEASING CORPORATION  
REPORT OF CHIEF FINANCIAL OFFICER

GWI LEASING CORPORATION (the "Lessee") HEREBY CERTIFIES THAT this Report is furnished pursuant to Section 14.1 of the Master Lease Agreement dated as of September 15, 1988 by and between the Lessee and BancBoston Leasing Inc.. (the "Lease Agreement"). Unless otherwise defined herein, the terms used in this Report have the meanings assigned to them in the Lease Agreement.

As required by Section 14.1 of the Lease Agreement, consolidated financial statements of the Lessee for the {year/quarter} ended \_\_\_\_\_, 19\_\_\_\_, (the "Financial Statements"), prepared in accordance with generally accepted accounting principles consistently applied, accompany this Report. The Financial Statements fairly present the consolidated financial position of the Lessee as at the date thereof and the results of operations of the Lessee for the period covered thereby (subject only to normal recurring year-end adjustments).

The figures set forth in Schedule A attached hereto for determining compliance by the Lessee with the financial covenants contained in the Lease Agreement are true and complete as of the date hereof.

The activities of the Lessee during the period covered by the Financial Statements have been reviewed by the Chief Financial Officer or by employees or agents under his or her immediate supervision. Based on such review, to

the best knowledge and belief of the Chief Financial Officer, and as of the date of this Report, no Event of Default has occurred.\*

WITNESS my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

GWJ LEASING CORPORATION

By: \_\_\_\_\_

Title: \_\_\_\_\_

\*If a Default has occurred, this paragraph is to be modified with an appropriate statement as to the nature thereof, the period of existence thereof, and what action the Company has taken, is taking, or proposes to take with respect thereto.

FINANCIAL COVENANTS

Ratio of Debt  
Tangible Net Worth (Section 14.3(i))

REQUIRED: \_\_\_\_\_: 1.00

ACTUAL:

- (i) DEBT (excluding deferred taxes) \$ \_\_\_\_\_
- (ii) Total: \$ \_\_\_\_\_
- (iii) Tangible Net Worth \$ \_\_\_\_\_
- (iv) Line (ii) divided by line (iii) \_\_\_\_\_: 1.00

Cash Flow Coverage (Section 14.3(ii))

REQUIRED: \_\_\_\_\_%

ACTUAL:

- (i) Earnings from operations \$ \_\_\_\_\_
- (ii) Less: extraordinary income (\$ \_\_\_\_\_)
- (iii) Plus: depreciation/amortization \$ \_\_\_\_\_
- (iv) Plus: Interest Expense \$ \_\_\_\_\_
- (v) Subtotal \$ \_\_\_\_\_
- (vi) Interest Expense \$ \_\_\_\_\_
- (vii) Current maturities or repayment of debt \$ \_\_\_\_\_
- (viii) Dividends \$ \_\_\_\_\_
- (ix) Subtotal \$ \_\_\_\_\_
- (x) Cash Flow Coverage:  
Line (v) divided by  
line (ix) \_\_\_\_\_%

WITNESS my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

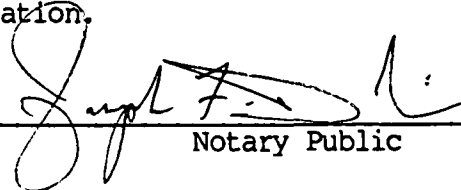
GWJ LEASING CORPORATION

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF MASSACHUSETTS  
COUNTY OF SUFFOLK

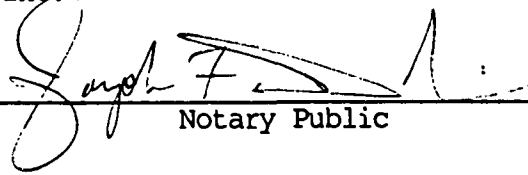
On the 30th day of September, 1988, before me personally came Mark W. Hastings, who is known to me to be an officer of GWI Leasing Corporation and who, being duly sworn, did depose and say that he/she executed this document in his/her capacity as an officer of GWI Leasing Corporation by authority conferred by its by-laws and he/she acknowledged said document to be the free act and deed of GWI Leasing Corporation.

  
\_\_\_\_\_  
Notary Public

My commission expires on 12/14/91

STATE OF MASSACHUSETTS  
COUNTY OF SUFFOLK

On the 30th day of September, 1988, before me personally came David L. Hitchings, who is known to me to be an officer of BancBoston Leasing Inc. and who, being duly sworn, did depose and say that he/she executed this document in his/her capacity as an officer of BancBoston Leasing Inc. by authority conferred by its by-laws and he/she acknowledged said document to be the free act and deed of BancBoston Leasing Inc.

  
\_\_\_\_\_  
Notary Public

My commission expires on 12/14/91



**BancBoston Leasing**  
a BANK OF BOSTON company

Rider No. 2

to

**Master Lease Agreement**

This Rider No. 2 (the "Rider") is entered into between BancBoston Leasing Inc. ("Lessor") and GWJ Leasing Corporation ("Lessee"), is contemporaneous with and amends the Master Lease Agreement dated the 28th day of September, 19 88 (the "Lease Agreement") between Lessor and Lessee. It is the intention of Lessor and Lessee that, upon execution, this Rider shall constitute a part of the Lease Agreement.

IN CONSIDERATION OF the mutual covenants and promises as hereinafter set forth, Lessor and Lessee hereby agree as follows:

1. All capitalized terms used in this Rider shall, unless otherwise indicated, have the definitions set forth in the Lease Agreement.

2. In Section 10.2 of the Lease Agreement, delete subsection (ii) and the remaining portion of Section 10.2 that appears thereafter, and substitute the following:

"(ii) terminate this Lease Agreement with respect to such Equipment by paying to Lessor the stipulated loss value ("Stipulated Loss Value") as defined in Exhibit A, which is attached to each Equipment Schedule, for the date, appearing on such Exhibit, which next follows the date on which the Equipment is lost, seized, condemned, destroyed or damaged ("Stipulated Loss Payment Date"). Upon payment of the Stipulated Loss Value and any Monthly Rent or other sums due and owing by Lessee to Lessor, the Lease Agreement shall terminate with respect to such Equipment and all right, title and interest of Lessor in and to the Equipment shall vest in Lessee. Any insurance proceeds or awards relating to the loss, seizure, condemnation or destruction of or damage to the Equipment, which are paid directly to Lessor, shall either be credited or paid over by Lessor to Lessee up to the amount of any Stipulated Loss Value, either payable or paid by Lessee.

"Any amounts paid by Lessee as a Stipulated Loss Value under this Section 10.2 shall not be available to Lessee for the lease of additional Equipment under the Lease Agreement."

3. In Section 17.1(e) of the Lease Agreement, delete the words ". . .twenty (20) percent of the Acquisition Cost. . ." and insert the following: ". . .the Stipulated Loss Value for the last Stipulated Loss Payment Date set forth on Exhibit A to the applicable Equipment Schedule. . ."

The terms and conditions of this Rider shall prevail where there may be conflicts or inconsistencies with the terms and conditions of the Lease Agreement.

IN WITNESS WHEREOF, Lessor and Lessee, by their duly authorized representatives, have executed this Rider which is intended to take effect as a sealed instrument as of the date first written above.

GWI Leasing Corporation

By *Mark W. Hartung*

Title *Treasurer*

Accepted at Boston, Massachusetts

BancBoston Leasing Inc.

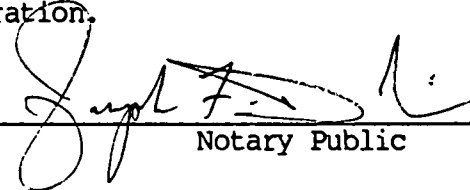
By *D. Hutchings*

Title *Vice President*

FORM R-5 (Rev 9-87)

STATE OF MASSACHUSETTS  
COUNTY OF SUFFOLK

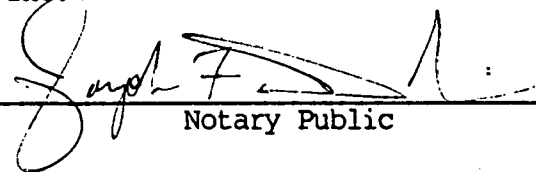
On the 30th day of September, 1988, before me personally came Mark W. Hastings, who is known to me to be an officer of GWI Leasing Corporation and who, being duly sworn, did depose and say that he/she executed this document in his/her capacity as an officer of GWI Leasing Corporation by authority conferred by its by-laws and he/she acknowledged said document to be the free act and deed of GWI Leasing Corporation.

  
\_\_\_\_\_  
Notary Public

My commission expires on 12/14/91

STATE OF MASSACHUSETTS  
COUNTY OF SUFFOLK

On the 30th day of September, 1988, before me personally came David L. Hitchings, who is known to me to be an officer of BancBoston Leasing Inc. and who, being duly sworn, did depose and say that he/she executed this document in his/her capacity as an officer of BancBoston Leasing Inc. by authority conferred by its by-laws and he/she acknowledged said document to be the free act and deed of BancBoston Leasing Inc.

  
\_\_\_\_\_  
Notary Public

My commission expires on 12/14/91



# BancBoston Leasing

a BANK OF BOSTON company

EXHIBIT A

## EQUIPMENT SCHEDULE NO. 1

This Equipment Schedule No. 1 is hereby made a part of the MASTER LEASE AGREEMENT dated as of September 28, 1988 between BancBoston Leasing Inc., as Lessor, and GWI Leasing Corporation, as Lessee.

### 1. EQUIPMENT DESCRIPTION (including quantity, model/feature, identification and/or serial number):

Railroad Cars and Locomotives see attached Equipment Description

2. ACQUISITION COST: \$5,250,000.00

3. LEASE TERM: 120 months

4. MONTHLY RENT: \$63,157.50 ☒ in advance ☐ in arrears

5. RECOVERY PERIOD: 7 years DEPRECIATION METHOD MACRS

6. ~~INSTALLATION SITE~~ Based in New York. Cars are located throughout the United States  
XXXXXX  
Address

States in Interstate Commerce.

City

County

State

Zip Code

LESSOR:

BancBoston Leasing Inc.

By

VICE PRESIDENT

Title

LESSEE:

GWI Leasing Corporation

By

Title



EXHIBIT A

(74) 100 ton lined covered hopper cars marked GWIX, numbers: 97549-97551, 97553-97555, 97557, 97560, 97562, 97563, 97565-97567, 97569, 97571-97574, 97576, 97577, 97579, 97580, 97582, 97585, 97588, 97592, 97593, 97596, 97597, 97601, 97603, 97607, 97609, 97610, 97616-97618, 97621, 97624, 97628-97630, 97632-97635, 97637, 97638, 97640-97642, 97644, 97649-97653, 97655, 97657, 97659, 97660, 97662, 97663, 97665, 97667, 97670, 97674, 97675, 97678, 97681, 97682, 97692, 97694, 97695.

(25) 100 ton lined covered hopper cars marked GWIX, numbers: 97500-97506, 97510, 97517, 97522, 97525, 97527, 97530-97533, 97535, 97537, 97539-97544, 97546.

(41) 100 ton lined covered hopper cars marked GWIX, numbers: 944605, 944607, 944610-944616, 944618, 944621, 944623, 944624, 944629, 944630, 944632, 944634, 944635, 944639, 944641, 944643, 944644, 944645, 944646, 944648-944651, 944653, 944655, 944659, 944662-944664, 944666, 944668, 944671, 944674, 944678, 944679, 944683.

(21) 100 ton lined covered hopper cars marked GWIX, numbers: 944704, 944711, 944719, 944725, 944728, 944735, 944739, 944741, 944744, 944746, 944748-944750, 944752, 944753, 944755, 944758, 944759, 944762, 944766, 944769.

(20) 100 ton lined covered hopper cars marked GWIX, numbers 954402, 954404, 954405, 954412, 954415, 954417-954419, 954423, 954425, 954426, 954428, 954433, 954435, 954436, 954439, 954441, 954442, 954444, 954445.

→ (122) 100 ton eastern coal open top hopper cars marked RSR, numbers: 1001-1122.

(4) 100 ton lined covered hopper cars marked GWIX, numbers: 510003, 510005, 510006, 510008.

(6) EMD GP-40 Locomotives, numbers 101-106.

(2) EMD GP-38 Locomotives, numbers 50 & 51.

(1) EMD SW1500 Locomotive, number 47.

BancBoston Leasing Inc.

By

*Dr. Hutchings*

Title

VICE PRESIDENT

GWJ Leasing Corporation

By

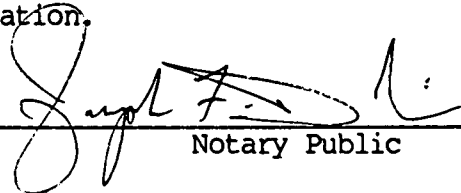
*Mark W. Hastings*

Title

*Treasurer*

STATE OF MASSACHUSETTS  
COUNTY OF SUFFOLK

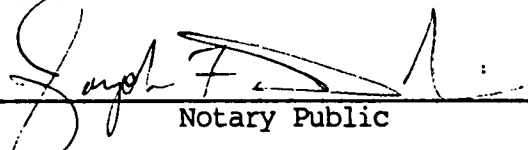
On the 30th day of September, 1988, before me personally came Mark W. Hastings, who is known to me to be an officer of GWI Leasing Corporation and who, being duly sworn, did depose and say that he/she executed this document in his/her capacity as an officer of GWI Leasing Corporation by authority conferred by its by-laws and he/she acknowledged said document to be the free act and deed of GWI Leasing Corporation.

  
\_\_\_\_\_  
Notary Public

My commission expires on 12/14/91

STATE OF MASSACHUSETTS  
COUNTY OF SUFFOLK

On the 30th day of September, 1988, before me personally came David L. Hitchings, who is known to me to be an officer of BancBoston Leasing Inc. and who, being duly sworn, did depose and say that he/she executed this document in his/her capacity as an officer of BancBoston Leasing Inc. by authority conferred by its by-laws and he/she acknowledged said document to be the free act and deed of BancBoston Leasing Inc.

  
\_\_\_\_\_  
Notary Public

My commission expires on 12/14/91

Addendum No. 1

to

Equipment Schedule No. 1

This Addendum No. 1 (the "Addendum") is entered into between BancBoston Leasing Inc. ("Lessor") and GWI Leasing Corporation ("Lessee"), is contemporaneous with and amends Equipment Schedule No. 1 (the "Equipment Schedule") pursuant to the Master Lease Agreement dated the 28th day of September, 1988, (the "Lease Agreement") between Lessor and Lessee. It is the intention of Lessor and Lessee that, upon execution, this Addendum shall constitute a part of the Lease Agreement as it applies to the Equipment Schedule.

IN CONSIDERATION OF the mutual covenants and promises as hereinafter set forth, Lessor and Lessee hereby agree as follows:

1. All capitalized terms used in this Addendum shall, unless otherwise defined, have the meanings set forth in the Lease Agreement. The terms of this Addendum shall apply only to the Equipment set forth on the Equipment Schedule.

2. Delete Section 18 of the Lease Agreement and insert the following:

"18. Tax Indemnification

18.1 This Lease Agreement has been entered into by Lessor and Lessee under the assumption that Lessor or its affiliated group ("Affiliated Group"), as defined in Section 1504 of the Internal Revenue Code of 1986, as amended, (the "Code") will be treated as the owner of the Equipment and will be entitled to such deductions and other benefits that are provided by the Code including, without limitation, deductions for the recovery of the Acquisition Cost of the Equipment, over the recovery period ("Recovery Period") set forth on the applicable Equipment Schedule, using the Accelerated Cost Recovery System as provided by Section 168 of the Code ("ACRS Deductions").

18.2 Lessee represents, covenants and warrants the following:

(a) Neither Lessee, nor any affiliate of Lessee, nor any other party since the Commencement Date (i) has claimed or will claim any ACRS Deductions, or any other deductions in the nature of cost recovery or depreciation with respect to the Equipment, or (ii) has made or will make any election under the Code regarding the method or the period for cost recovery or deductions for personal property which will be binding upon Lessor and which will adversely affect the assumptions set forth in Section 18.1 above with respect to the Equipment or (iii) shall, at any time, take any action or file any returns or other documents inconsistent with the assumptions set forth in Section 18.1 above.

(b) In the event the Equipment has been sold to Lessor by Lessee and leased back from Lessor by Lessee, such Equipment constitutes property placed in service in a churning transaction within the meaning of Section 168(f)(5) of the Code but Section 168(f)(5)(B)(ii) will permit Lessor to claim ACRS Deductions allowable under the Tax Reform Act of 1986.

(c) The Equipment has not been manufactured or produced in any foreign country which is subject to an Executive Order of the President of the United States that would deny the availability of ACRS Deductions to Lessor.

(d) The Acquisition Cost of the Equipment does not exceed the fair market value of the Equipment.

(e) When delivered and accepted under the Lease Agreement, the Equipment will not require any improvements, modifications, or additions (other than ancillary or incidental items of removable equipment) in order to be rendered complete for its intended use by Lessee.

(f) At the time the Equipment is accepted under the Lease Agreement, Lessee and, if applicable, any member of its Affiliated Group shall have been fully reimbursed for any portion of the Acquisition Cost of the Equipment which it may have furnished; furthermore, on the applicable Commencement Date and during the Initial Term, neither Lessee nor any member of its Affiliated Group shall have any investment in the Equipment.

(g) The Equipment will be placed in service on the applicable Commencement Date and will be used in a trade or business or will be held for the production of income within the meaning of Section 167 of the Code.

(h) From the applicable Commencement Date and during the Initial Term, the Equipment will constitute and will be treated as (i) "recovery property" within the meaning of Section 168 of the Code, and (ii) property with the Recovery Period set forth in the applicable Equipment Schedule determined in accordance with Section 168(c) of the Code.

(i) From the applicable Commencement Date and during the Initial Term, the Equipment will not constitute, or be treated as, (i) "tax exempt use property" within the meaning of Section 168(h) of the Code which would cause Lessor to fail to realize, lose, or suffer diminution, deferral, or recapture of any of the ACRS Deductions described in Section 18.1 above, or (ii) "limited use property" within the meaning of Rev. Proc. 76-30, 1976 C.B. 647.

(j) During the Initial Term, the Equipment will not be used "predominantly outside the United States" within the meaning of Section 168(g)(4) of the Code.

(k) During the Initial Term, Lessor shall not be required to include in its gross income for Federal income tax purposes any amount derived from the cost of any alteration, addition, improvement, modification, replacement, or substitution of the Equipment or from any refund or credit from the manufacturer or supplier of the Equipment.

(l) For purposes of all income tax laws other than the Code, Lessor will be entitled to depreciation deductions in respect of the Equipment on the basis of the same assumptions and benefits, as permitted under such income tax laws, set forth above in respect of the Code (including any assumptions and benefits available under the Code) to the extent applicable.

18.3 A tax loss ("Tax Loss") shall be deemed to have occurred under this Section 18 if Lessor or its Affiliated Group, for Federal income tax purposes, shall not be entitled to, shall not be allowed, shall suffer recapture of or shall lose any of the ACRS Deductions, as a result of:

(a) Lessee's breach of, or its failure to comply with, any representation, covenant, or warranty set forth in Section 18.2 above, or the inaccuracy of any such representation;

(b) the occurrence of an Event of Default as defined in Section 16 of the Lease Agreement;

(c) the replacement, substitution, loss, seizure, condemnation, destruction or governmental requisitioning of the Equipment; or

(d) any act (whether or not permitted or required under this Lease Agreement) or any omission of Lessee, any affiliate of Lessee, any sublessee or assignee of Lessee, or any entity, other than Lessor, having possession, control or use of the Equipment (whether or not such possession, control or use may be authorized or unauthorized).

18.4 If a Tax Loss occurs, then Lessee shall pay to Lessor, upon demand, an adjustment to Monthly Rent based upon a sum to be computed by Lessor in the manner set forth below and which shall be amortized over the then remaining Initial Term. Such sum, after deduction of all Federal, state and local income taxes payable by Lessor as a result of the receipt of such sum, shall be sufficient to restore Lessor or its Affiliated Group to substantially the same position, on an after-tax basis, as it would have been in but for the loss of such ACRS Deductions. In making its computation, Lessor or its Affiliated Group shall consider, but shall not be limited to, the following factors: (i) the amounts and timing of any net loss of tax benefits resulting from any such lack of entitlement to or loss, recapture, or disallowance of ACRS Deductions but offset by any tax benefits derived from any depreciation or other capital recovery deductions or exclusions from income allowed to Lessor or its Affiliated Group with respect to the same Equipment; (ii) penalties, interest or other charges imposed; (iii) difference in tax years involved; and (iv) the time value of money at a reasonable rate determined, in good faith,

by Lessor. For purposes of computation only, the amount of indemnification payments hereunder shall be calculated on the assumption that Lessor and its Affiliated Group have or will have, in all tax years involved, sufficient taxable income and tax liability to realize all tax benefits and incur all losses of tax benefits at the highest marginal Federal corporate income tax rate in each year. Upon request, Lessor shall provide Lessee with the methods of computation used in determining any sum that may be due and payable by Lessee under this Section 18.

18.5 The representations, obligations and indemnities of Lessee under this Section 18 shall continue in full force and effect, notwithstanding the expiration or other termination of this Lease Agreement."

The terms and conditions of this Addendum shall prevail where there may be conflicts or inconsistencies with the terms and conditions of the Lease Agreement as it applies to the Equipment Schedule.

IN WITNESS WHEREOF, Lessor and Lessee, by their duly authorized representatives, have executed and delivered this Addendum which is intended to take effect as a sealed instrument as of the date of the Lease Agreement.

GWJ Leasing Corporation

By

*William W. Hartung*

Title

*Treasurer*

Accepted at Boston, Massachusetts

BancBoston Leasing Inc.

By

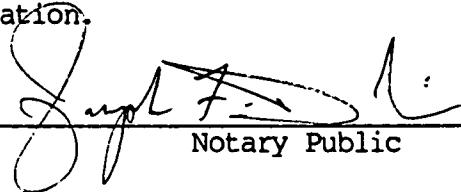
*J. H. Hutchings*

Title  
#853

*VICE PRESIDENT*

STATE OF MASSACHUSETTS  
COUNTY OF SUFFOLK

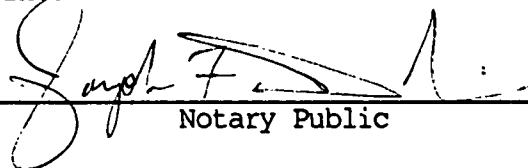
On the 30th day of September, 1988, before me personally came Mark W. Hastings, who is known to me to be an officer of GWI Leasing Corporation and who, being duly sworn, did depose and say that he/she executed this document in his/her capacity as an officer of GWI Leasing Corporation by authority conferred by its by-laws and he/she acknowledged said document to be the free act and deed of GWI Leasing Corporation.

  
\_\_\_\_\_  
Notary Public

My commission expires on 12/14/91

STATE OF MASSACHUSETTS  
COUNTY OF SUFFOLK

On the 30th day of September, 1988, before me personally came David L. Hitchings, who is known to me to be an officer of BancBoston Leasing Inc. and who, being duly sworn, did depose and say that he/she executed this document in his/her capacity as an officer of BancBoston Leasing Inc. by authority conferred by its by-laws and he/she acknowledged said document to be the free act and deed of BancBoston Leasing Inc.

  
\_\_\_\_\_  
Notary Public

My commission expires on 12/14/91



**BancBoston Leasing**

a BANK OF BOSTON company

**EXHIBIT B**

**CERTIFICATE OF ACCEPTANCE**

To: BancBoston Leasing Inc.  
100 Federal Street  
Boston, Massachusetts 02110

Pursuant to the MASTER LEASE AGREEMENT dated as of September 28,  
1988 (the "Lease Agreement") between BancBoston Leasing Inc. (the "Lessor") and the undersigned  
(the "Lessee"), the equipment described on Equipment Schedule No. 1 (the "Equipment")  
has been delivered to the location set forth in such Equipment Schedule, has been tested and inspected  
by Lessee, and has been found to be in good repair and working order.

The Equipment has been accepted and placed in service by Lessee for all purposes under the  
Lease Agreement on September 30, 1988 (the "Commencement Date").

Lessee represents, warrants and covenants that: (a) as of the Commencement Date, all represen-  
tations set forth in Section 18 of the Lease Agreement apply to the Equipment accepted hereunder; (b)  
in the event of a sale and leaseback of the Equipment, neither Lessee nor any member of its Affiliated  
Group as defined in the Lease Agreement has made or will make any election under the Internal Revenue  
Code of 1986, as amended (the "Code") affecting the depreciation of the Equipment or of any class of  
property which would apply to the Equipment after the sale of the Equipment to Lessor by Lessee; ~~(c)~~  
~~in the event of a sale and leaseback of the Equipment, the Equipment will not constitute property placed~~  
~~in service in a churning transaction within the meaning of Section 168(f)(5) of the Code;~~ (c) neither  
Lessee nor any member of its Affiliated Group filing a consolidated Federal income tax return will take  
any deduction for recovery of the cost of the Equipment; (d) the Equipment has been placed in service  
under the Lease Agreement on the Commencement Date; and ~~(e)~~ neither Lessee nor any member of  
its Affiliated Group has any investment in the cost of the Equipment.



The execution of this Certificate of Acceptance by Lessee shall not be construed, in any way, to  
release or to waive the obligations of any manufacturer or supplier for any warranties with respect to  
the Equipment.

This Certificate of Acceptance applicable to Equipment Schedule No. 1 shall constitute  
a part of the Lease Agreement.

IN WITNESS WHEREOF Lessee, by its duly authorized officer or agent, has executed and delivered  
this Certificate of Acceptance which is intended to take effect as a sealed instrument.

GWI Leasing Corporation

By

Title



**BancBoston Leasing**

a BANK OF BOSTON company

**EXHIBIT A****STIPULATED LOSS VALUES**

With reference to the Rider No 1 (the "Rider") as applicable to the Equipment set forth on Equipment Schedule No. 1, Lessor and Lessee agree that the Stipulated Loss Value shall mean the product obtained by multiplying the Acquisition Cost of the Equipment terminated pursuant to the Rider by the appropriate percentage for the Stipulated Loss Payment Date.

<u>STIPULATED LOSS PAYMENT DATE</u>	<u>PERCENTAGE</u>	<u>STIPULATED LOSS PAYMENT DATE</u>	<u>PERCENTAGE</u>
1-Oct-88	107.7802%	1-Apr-91	96.4802%
1-Nov-88	107.5642%	1-May-91	95.9757%
1-Dec-88	107.3063%	1-Jun-91	95.4653%
1-Jan-89	107.0424%	1-Jul-91	94.9475%
1-Feb-89	106.7724%	1-Aug-91	94.4222%
1-Mar-89	106.4923%	1-Sep-91	93.8910%
1-Apr-89	106.1976%	1-Oct-91	93.3522%
1-May-89	105.8967%	1-Nov-91	92.8058%
1-Jun-89	105.5810%	1-Dec-91	92.2533%
1-Jul-89	105.2590%	1-Jan-92	91.6932%
1-Aug-89	104.9306%	1-Feb-92	91.1253%
1-Sep-89	104.5873%	1-Mar-92	90.5504%
1-Oct-89	104.2375%	1-Apr-92	89.9722%
1-Nov-89	103.8811%	1-May-92	89.3863%
1-Dec-89	103.5097%	1-Jun-92	88.7971%
1-Jan-90	103.1316%	1-Jul-92	88.1999%
1-Feb-90	102.7468%	1-Aug-92	87.5949%
1-Mar-90	102.3514%	1-Sep-92	86.9865%
1-Apr-90	101.9467%	1-Oct-92	86.3700%
1-May-90	101.5352%	1-Nov-92	85.7455%
1-Jun-90	101.1142%	1-Dec-92	85.1175%
1-Jul-90	100.6862%	1-Jan-93	84.4815%
1-Aug-90	100.2512%	1-Feb-93	83.8372%
1-Sep-90	99.8066%	1-Mar-93	83.1867%
1-Oct-90	99.3550%	1-Apr-93	82.5327%
1-Nov-90	98.8962%	1-May-93	81.8703%
1-Dec-90	98.4277%	1-Jun-93	81.2043%
1-Jan-91	97.9519%	1-Jul-93	80.5300%
1-Feb-91	97.4689%	1-Aug-93	79.8472%
1-Mar-91	96.9774%	1-Sep-93	79.1606%

BancBoston Leasing Inc.

By: *[Signature]*  
Title: VICE PRESIDENT

GWI Leasing Corporation

By: *[Signature]*  
Title: Treasurer



# BancBoston Leasing

a BANK OF BOSTON company

## EXHIBIT A

### STIPULATED LOSS VALUES

With reference to the Rider No. 1 (the "Rider") as applicable to the Equipment set forth on Equipment Schedule No. 1, Lessor and Lessee agree that the Stipulated Loss Value shall mean the product obtained by multiplying the Acquisition Cost of the Equipment terminated pursuant to the Rider by the appropriate percentage for the Stipulated Loss Payment Date.

<u>STIPULATED LOSS</u> <u>PAYMENT DATE</u>	<u>PERCENTAGE</u>	<u>STIPULATED LOSS</u> <u>PAYMENT DATE</u>	<u>PERCENTAGE</u>
1-Oct-93	78.4656%	1-May-96	53.5166%
1-Nov-93	77.7621%	1-Jun-96	52.6186%
1-Dec-93	77.0546%	1-Jul-96	51.7110%
1-Jan-94	76.3385%	1-Aug-96	50.7936%
1-Feb-94	75.6138%	1-Sep-96	49.8786%
1-Mar-94	74.8825%	1-Oct-96	48.9538%
1-Apr-94	74.1471%	1-Nov-96	48.0191%
1-May-94	73.4029%	1-Dec-96	47.0868%
1-Jun-94	72.6546%	1-Jan-97	46.1446%
1-Jul-94	71.8975%	1-Feb-97	45.1925%
1-Aug-94	71.1315%	1-Mar-97	44.2357%
1-Sep-94	70.3612%	1-Apr-97	43.2812%
1-Oct-94	69.5819%	1-May-97	42.3167%
1-Nov-94	68.7937%	1-Jun-97	41.3543%
1-Dec-94	68.0010%	1-Jul-97	40.3819%
1-Jan-95	67.1993%	1-Aug-97	39.3993%
1-Feb-95	66.3884%	1-Sep-97	38.4188%
1-Mar-95	65.5704%	1-Oct-97	37.4281%
1-Apr-95	64.7516%	1-Nov-97	36.4272%
1-May-95	63.9236%	1-Dec-97	35.4282%
1-Jun-95	63.0947%	1-Jan-98	34.4189%
1-Jul-95	62.2565%	1-Feb-98	33.3994%
1-Aug-95	61.4090%	1-Mar-98	32.3748%
1-Sep-95	60.5605%	1-Apr-98	31.3575%
1-Oct-95	59.7026%	1-May-98	30.3298%
1-Nov-95	58.8353%	1-Jun-98	29.3094%
1-Dec-95	57.9668%	1-Jul-98	28.2785%
1-Jan-96	57.0889%	1-Aug-98	27.2372%
1-Feb-96	56.2014%	1-Sep-98	26.2030%
1-Mar-96	55.3080%	1-Oct-98	25.0000%
1-Apr-96	54.4171%		

BancBoston Leasing Inc.

By: [Signature]  
Title: VICE PRESIDENT

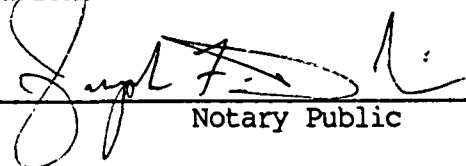
GWI Leasing Corporation

By: [Signature]  
Title: Treasurer

FORM R-5A, R-6A (REV 9-87)

STATE OF MASSACHUSETTS  
COUNTY OF SUFFOLK

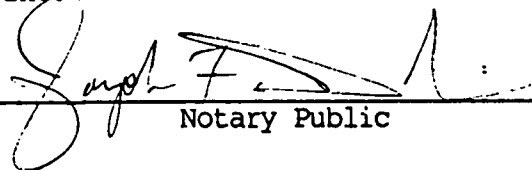
On the 30th day of September, 1988, before me personally came Mark W. Hastings, who is known to me to be an officer of GWI Leasing Corporation and who, being duly sworn, did depose and say that he/she executed this document in his/her capacity as an officer of GWI Leasing Corporation by authority conferred by its by-laws and he/she acknowledged said document to be the free act and deed of GWI Leasing Corporation.

  
Notary Public

My commission expires on 12/14/91

STATE OF MASSACHUSETTS  
COUNTY OF SUFFOLK

On the 30th day of September, 1988, before me personally came David L. Hitchings, who is known to me to be an officer of BancBoston Leasing Inc. and who, being duly sworn, did depose and say that he/she executed this document in his/her capacity as an officer of BancBoston Leasing Inc. by authority conferred by its by-laws and he/she acknowledged said document to be the free act and deed of BancBoston Leasing Inc.

  
Notary Public

My commission expires on 12/14/91



# BancBoston Leasing

a BANK OF BOSTON company

EXHIBIT A

## EQUIPMENT SCHEDULE NO. <sup>2</sup>

This Equipment Schedule No. 2 is hereby made a part of the MASTER LEASE AGREEMENT dated as of September 28, 1988 between BancBoston Leasing Inc., as Lessor, and GWI Leasing Corporation, as Lessee.

1. EQUIPMENT DESCRIPTION (including quantity, model/feature, identification and/or serial number):

Railroad Cars and Locomotives see attached Equipment Description

2. ACQUISITION COST: \$8,302,000.00

3. LEASE TERM: 120 months

4. MONTHLY RENT: \$104,937.28 ☒ in advance/☐ in arrears

5. RECOVERY PERIOD: 12 years DEPRECIATION METHOD DOUBLE DECLINING BALANCE

6. ~~INSTALLATION SITE~~ Based in New York. Cars are located throughout the United States

States in Interstate Commerce.

City

County

State

Zip Code

LESSOR:

BancBoston Leasing Inc.

By [Signature]  
Title VICE PRESIDENT

LESSEE:

GWI Leasing Corporation

By [Signature]  
Title Treasurer

EXHIBIT A

- (25) all steel plain box cars marked ICG, numbers: 503275-503299.  
(192) 100 ton lined covered hopper cars marked GWIX, numbers: 10000-10013, 10015-10032, 10034-10112, 10114-10127, 10129-10135, 10137-10140, 10142-10191, 10193-10196, 10198, 10199.  
(6) 100 ton lined covered hopper cars marked GWIX, numbers: 510001, 510002, 510004, 510007, 510009, 510010.  
(96) 100 ton lined covered hopper cars marked GWIX or GNWR, numbers: 810105-810115, 810206-810233, 810236-810272, 810274-810285, 810287-810294.  
(48) 100 ton lined covered hopper cars marked GWIX or GNWR, numbers: 102200-102209, 102211-102222, 102224-102249.  
(49) 100 ton lined covered hopper cars marked GWIX or GNWR, numbers: 610001-610043, 610045-610050.  
(2) Alco 424M Locomotives, numbers 62 & 63.

BancBoston Leasing Inc.

By

*John J. Hutchings*

Title

VICE PRESIDENT

GWJ Leasing Corporation

By

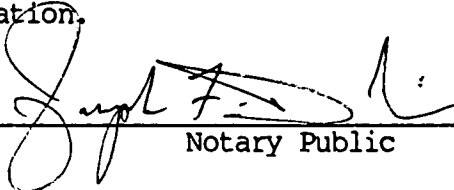
*William W. Keating*

Title

Treasurer

STATE OF MASSACHUSETTS  
COUNTY OF SUFFOLK

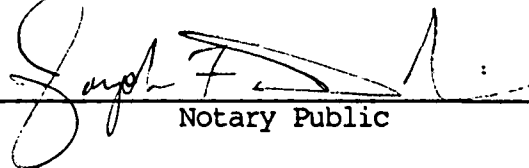
On the 30th day of September, 1988, before me personally came Mark W. Hastings, who is known to me to be an officer of GWI Leasing Corporation and who, being duly sworn, did depose and say that he/she executed this document in his/her capacity as an officer of GWI Leasing Corporation by authority conferred by its by-laws and he/she acknowledged said document to be the free act and deed of GWI Leasing Corporation.

  
\_\_\_\_\_  
Notary Public

My commission expires on 12/14/91

STATE OF MASSACHUSETTS  
COUNTY OF SUFFOLK

On the 30th day of September, 1988, before me personally came David L. Hitchings, who is known to me to be an officer of BancBoston Leasing Inc. and who, being duly sworn, did depose and say that he/she executed this document in his/her capacity as an officer of BancBoston Leasing Inc. by authority conferred by its by-laws and he/she acknowledged said document to be the free act and deed of BancBoston Leasing Inc.

  
\_\_\_\_\_  
Notary Public

My commission expires on 12/14/91

Addendum No. 1

to

Equipment Schedule No. 2

This Addendum No. 1 (the "Addendum") is entered into between BancBoston Leasing Inc. ("Lessor") and GWI Leasing Corporation ("Lessee"), is contemporaneous with and amends Equipment Schedule No. 2 (the "Equipment Schedule") pursuant to the Master Lease Agreement dated the 28th day of September, 1988, (the "Lease Agreement") between Lessor and Lessee. It is the intention of Lessor and Lessee that, upon execution, this Addendum shall constitute a part of the Lease Agreement as it applies to the Equipment Schedule.

IN CONSIDERATION OF the mutual covenants and promises as hereinafter set forth, Lessor and Lessee hereby agree as follows:

1. All capitalized terms used in this Addendum shall, unless otherwise defined, have the meanings set forth in the Lease Agreement. The terms of this Addendum shall apply only to the Equipment set forth on the Equipment Schedule.

2. Delete Section 18 of the Lease Agreement and insert the following:

"18. Tax Indemnification

18.1 This Lease Agreement has been entered into by Lessor and Lessee under the assumption that Lessor or its affiliated group ("Affiliated Group"), as defined in Section 1504 of the Internal Revenue Code of 1986, as amended, (the "Code") will be treated as the owner of the Equipment and will be entitled to such deductions and other benefits that are provided by the Code including, without limitation, deductions for the depreciation of the Equipment, over the useful life of the Equipment ("Recovery Period") set forth on the applicable Equipment Schedule, using the Acquisition Cost of the Equipment as the basis for the depreciation and using the declining balance method as provided by Section 167(b)(2) of the Code (the "Depreciation Deduction").

18.2. Lessee represents, covenants and warrants the following:

(a) Neither Lessee, nor any affiliate of Lessee, nor any other party since the Commencement Date (i) has claimed or will claim any Depreciation Deductions, or any other deductions in the nature of cost recovery or depreciation with respect to the Equipment, or (ii) has made or will make any election under the Code regarding the method or the period for depreciation or deductions for personal property which will be binding upon Lessor and which will adversely affect the assumptions set forth in Section 18.1 above with respect to the Equipment or (iii) shall, at any time, take any action or file

any returns or other documents inconsistent with the assumptions set forth in Section 18.1 above.

(b) The Equipment has not been manufactured or produced in any foreign country which is subject to an Executive Order of the President of the United States that would deny the availability of Depreciation Deductions to Lessor.

(c) The Acquisition Cost of the Equipment does not exceed the fair market value of the Equipment.

(d) When delivered and accepted under the Lease Agreement, the Equipment will not require any improvements, modifications, or additions (other than ancillary or incidental items of removable equipment) in order to be rendered complete for its intended use by Lessee.

(e) At the time the Equipment is accepted under the Lease Agreement, Lessee and, if applicable, any member of its Affiliated Group shall have been fully reimbursed for any portion of the Acquisition Cost of the Equipment which it may have furnished; furthermore, on the applicable Commencement Date and during the Initial Term, neither Lessee nor any member of its Affiliated Group shall have any investment in the Equipment.

(f) The Equipment will be placed in service on the applicable Commencement Date and will be used in a trade or business or will be held for the production of income within the meaning of Section 167 of the Code.

(g) From the applicable Commencement Date and during the Initial Term, the Equipment will not constitute, or be treated as, "limited use property" within the meaning of Rev. Proc. 76-30, 1976 C.B. 647.

(h) During the Initial Term, the Equipment will not be used "predominantly outside the United States."

(i) For United States federal income tax purposes, Lessor will, upon a timely election, be entitled to use the Class Life Depreciation Range System prescribed by Section 167(m) of the Code and described in the Equipment Schedule as the Recovery Period in computing deductions for depreciation with respect to the Equipment, in consequence of which:

(i) Lessor may use the accelerated method of depreciation described in Section 167(b)(2) of the Code;

(ii) by electing to depreciate the Equipment under the declining balance method of depreciation, Lessor may switch from such method to the sum of the years digits' method of depreciation, and by utilizing the declining balance method with respect to the Equipment, it may switch to the straight-line method, without the consent of the Commissioner of Internal Revenue;



(iii) Lessor may depreciate the Equipment over a depreciable useful life of 12 years, pursuant to the applicable Asset Guideline Class of Rev. Proc. 77-10;

(iv) Lessor may compute its annual allowance for depreciation with respect to the Equipment without taking salvage value into account, but without depreciating below salvage value, except to the extent provided in Section 167(f) of the Code and Treas. Reg. §1.167(a)-(11)(d);

(v) provided that half year convention is elected for 1988 pursuant to Treas. Reg. §1.167(a)-11(c)(2), Lessor will be entitled for purposes of depreciation, to treat the Equipment as having been placed in service on July 1, 1988;

(vi) provided Lessor makes a timely application of the reduction in salvage value provided by Section 167(f) of the Code and by Treas. Reg. §§1.167(a)-(11)(d)(1)(ii) and 1.167(f)-1(a), Lessor, in computing its depreciation deductions, will be able to depreciate each item of Equipment to a salvage value of 0% of Lessor's Acquisition Cost.

(j) For purposes of all income tax laws other than the Code, Lessor will be entitled to depreciation deductions in respect of the Equipment on the basis of the same assumptions and benefits, as permitted under such income tax laws, set forth above in respect of the Code (including any assumptions and benefits available under the Class Life Asset Depreciation Range System and other elections available under the Code), to the extent applicable.

(k) During the Initial Term, Lessor shall not be required to include in its gross income for Federal income tax purposes any amount derived from the cost of any alteration, addition, improvement, modification, replacement, or substitution of the Equipment or from any refund or credit from the manufacturer or supplier of the Equipment.

18.3 A tax loss ("Tax Loss") shall be deemed to have occurred under this Section 18 if Lessor or its Affiliated Group, for Federal income tax purposes, shall not be entitled to, shall not be allowed, shall suffer recapture of or shall lose any of the Depreciation Deductions, as a result of:

(a) Lessee's breach of, or its failure to comply with, any representation, covenant, or warranty set forth in Section 18.2 above, or the inaccuracy of any such representation;

(b) the occurrence of an Event of Default as defined in Section 16 of the Lease Agreement;

(c) the replacement, substitution, loss, seizure, condemnation, destruction or governmental requisitioning of the Equipment; or

(d) any act (whether or not permitted or required under this Lease Agreement) or any omission of Lessee, any affiliate of Lessee, any

sublessee or assignee of Lessee, or any entity, other than Lessor, having possession, control or use of the Equipment (whether or not such possession, control or use may be authorized or unauthorized).

18.4 If a Tax Loss occurs, then Lessee shall pay to Lessor, upon demand, an adjustment to Monthly Rent based upon a sum to be computed by Lessor in the manner set forth below and which shall be amortized over the then remaining Initial Term. Such sum, after deduction of all Federal, state and local income taxes payable by Lessor as a result of the receipt of such sum, shall be sufficient to restore Lessor or its Affiliated Group to substantially the same position, on an after-tax basis, as it would have been in but for the loss of such Depreciation Deductions. In making its computation, Lessor or its Affiliated Group shall consider, but shall not be limited to, the following factors: (i) the amounts and timing of any net loss of tax benefits resulting from any such lack of entitlement to or loss, recapture, or disallowance of Depreciation Deductions but offset by any tax benefits derived from any depreciation or other capital recovery deductions or exclusions from income allowed to Lessor or its Affiliated Group with respect to the same Equipment; (ii) penalties, interest or other charges imposed; (iii) difference in tax years involved; and (iv) the time value of money at a reasonable rate determined, in good faith, by Lessor. For purposes of computation only, the amount of indemnification payments hereunder shall be calculated on the assumption that Lessor and its Affiliated Group have or will have, in all tax years involved, sufficient taxable income and tax liability to realize all tax benefits and incur all losses of tax benefits at the highest marginal Federal corporate income tax rate in each year. Upon request, Lessor shall provide Lessee with the methods of computation used in determining any sum that may be due and payable by Lessee under this Section 18.

18.5 The representations, obligations and indemnities of Lessee under this Section 18 shall continue in full force and effect, notwithstanding the expiration or other termination of this Lease Agreement."

The terms and conditions of this Addendum shall prevail where there may be conflicts or inconsistencies with the terms and conditions of the Lease Agreement as it applies to the Equipment Schedule.

IN WITNESS WHEREOF, Lessor and Lessee, by their duly authorized representatives, have executed and delivered this Addendum which is intended to take effect as a sealed instrument as of the date of the Lease Agreement.

GWJ Leasing Corporation

By

*W. W. Hartung*

Title

*Treasurer*

Accepted at Boston, Massachusetts

BancBoston Leasing Inc.

By

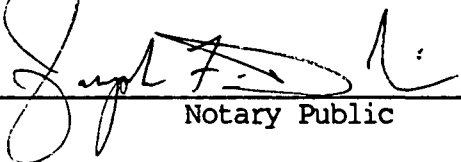
*J. K. Fitchings*

Title  
#857

VICE PRESIDENT

STATE OF MASSACHUSETTS  
COUNTY OF SUFFOLK

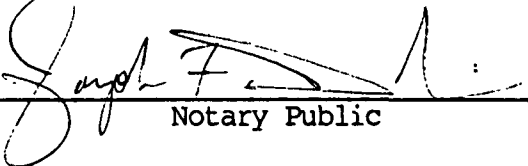
On the 30th day of September, 1988, before me personally came Mark W. Hastings, who is known to me to be an officer of GWI Leasing Corporation and who, being duly sworn, did depose and say that he/she executed this document in his/her capacity as an officer of GWI Leasing Corporation by authority conferred by its by-laws and he/she acknowledged said document to be the free act and deed of GWI Leasing Corporation.

  
\_\_\_\_\_  
Notary Public

My commission expires on 12/14/91

STATE OF MASSACHUSETTS  
COUNTY OF SUFFOLK

On the 30th day of September, 1988, before me personally came David L. Hitchings, who is known to me to be an officer of BancBoston Leasing Inc. and who, being duly sworn, did depose and say that he/she executed this document in his/her capacity as an officer of BancBoston Leasing Inc. by authority conferred by its by-laws and he/she acknowledged said document to be the free act and deed of BancBoston Leasing Inc.

  
\_\_\_\_\_  
Notary Public

My commission expires on 12/14/91



**BancBoston Leasing**

a BANK OF BOSTON company

**EXHIBIT B**

**CERTIFICATE OF ACCEPTANCE**

To: BancBoston Leasing Inc.  
100 Federal Street  
Boston, Massachusetts 02110

Pursuant to the MASTER LEASE AGREEMENT dated as of September 28, 1988 (the "Lease Agreement") between BancBoston Leasing Inc. (the "Lessor") and the undersigned (the "Lessee"), the equipment described on Equipment Schedule No. 2 (the "Equipment") has been delivered to the location set forth in such Equipment Schedule, has been tested and inspected by Lessee, and has been found to be in good repair and working order.

The Equipment has been accepted and placed in service by Lessee for all purposes under the Lease Agreement on September 30, 1988 (the "Commencement Date").

Lessee represents, warrants and covenants that: (a) as of the Commencement Date, all representations set forth in Section 18 of the Lease Agreement apply to the Equipment accepted hereunder; (b) in the event of a sale and leaseback of the Equipment, neither Lessee nor any member of its Affiliated Group as defined in the Lease Agreement has made or will make any election under the Internal Revenue Code of 1986, as amended (the "Code") affecting the depreciation of the Equipment or of any class of property which would apply to the Equipment after the sale of the Equipment to Lessor by Lessee; ~~(c) in the event of a sale and leaseback of the Equipment, the Equipment will not constitute property placed in service in a churning transaction within the meaning of Section 168(f)(6) of the Code;~~ (d) neither Lessee nor any member of its Affiliated Group filing a consolidated Federal income tax return will take any deduction for recovery of the cost of the Equipment; (e) the Equipment has been placed in service under the Lease Agreement on the Commencement Date; and (f) neither Lessee nor any member of its Affiliated Group has any investment in the cost of the Equipment.



The execution of this Certificate of Acceptance by Lessee shall not be construed, in any way, to release or to waive the obligations of any manufacturer or supplier for any warranties with respect to the Equipment.

This Certificate of Acceptance applicable to Equipment Schedule No. 2 shall constitute a part of the Lease Agreement.

IN WITNESS WHEREOF Lessee, by its duly authorized officer or agent, has executed and delivered this Certificate of Acceptance which is intended to take effect as a sealed instrument.

GWI Leasing Corporation

By *Michael W. Hastings*  
Title *Treasurer*



# BancBoston Leasing

a BANK OF BOSTON company

## EXHIBIT A

### STIPULATED LOSS VALUES

With reference to the Rider No. 1 (the "Rider") as applicable to the Equipment set forth on Equipment Schedule No. 2, Lessor and Lessee agree that the Stipulated Loss Value shall mean the product obtained by multiplying the Acquisition Cost of the Equipment terminated pursuant to the Rider by the appropriate percentage for the Stipulated Loss Payment Date.

STIPULATED LOSS PAYMENT DATE	PERCENTAGE	STIPULATED LOSS PAYMENT DATE	PERCENTAGE
1-Oct-88	107.0221%	1-Apr-91	94.9739%
1-Nov-88	106.7315%	1-May-91	94.4718%
1-Dec-88	106.4194%	1-Jun-91	93.9660%
1-Jan-89	106.1010%	1-Jul-91	93.4526%
1-Feb-89	105.7761%	1-Aug-91	92.9318%
1-Mar-89	105.4431%	1-Sep-91	92.4072%
1-Apr-89	105.1034%	1-Oct-91	91.8750%
1-May-89	104.7572%	1-Nov-91	91.3352%
1-Jun-89	104.4043%	1-Dec-91	90.7915%
1-Jul-89	104.0448%	1-Jan-92	90.2401%
1-Aug-89	103.6786%	1-Feb-92	89.6810%
1-Sep-89	103.3056%	1-Mar-92	89.1157%
1-Oct-89	102.9259%	1-Apr-92	88.5480%
1-Nov-89	102.5393%	1-May-92	87.9723%
1-Dec-89	102.1459%	1-Jun-92	87.3941%
1-Jan-90	101.7456%	1-Jul-92	86.8080%
1-Feb-90	101.3385%	1-Aug-92	86.2140%
1-Mar-90	100.9243%	1-Sep-92	85.6172%
1-Apr-90	100.5052%	1-Oct-92	85.0125%
1-May-90	100.0791%	1-Nov-92	84.3997%
1-Jun-90	99.6480%	1-Dec-92	83.7841%
1-Jul-90	99.2098%	1-Jan-93	83.1604%
1-Aug-90	98.7645%	1-Feb-93	82.5285%
1-Sep-90	98.3141%	1-Mar-93	81.8909%
1-Oct-90	97.8565%	1-Apr-93	81.2515%
1-Nov-90	97.3917%	1-May-93	80.6038%
1-Dec-90	96.9217%	1-Jun-93	79.9544%
1-Jan-91	96.4444%	1-Jul-93	79.2967%
1-Feb-91	95.9597%	1-Aug-93	78.6307%
1-Mar-91	95.4686%	1-Sep-93	77.9628%

BancBoston Leasing Inc.

By: *[Signature]*  
Title: VICE PRESIDENT

GWI Leasing Corporation

By: *[Signature]*  
Title: Treasurer

FORM R-5A, R-6A (REV 9-87)

**BancBoston Leasing**

a BANK OF BOSTON company

**EXHIBIT A****STIPULATED LOSS VALUES**

With reference to the Rider No 1 (the "Rider") as applicable to the Equipment set forth on Equipment Schedule No. 2, Lessor and Lessee agree that the Stipulated Loss Value shall mean the product obtained by multiplying the Acquisition Cost of the Equipment terminated pursuant to the Rider by the appropriate percentage for the Stipulated Loss Payment Date.

<b>STIPULATED LOSS PAYMENT DATE</b>	<b>PERCENTAGE</b>	<b>STIPULATED LOSS PAYMENT DATE</b>	<b>PERCENTAGE</b>
1-Oct-93	77.2865%	1-May-96	53.3177%
1-Nov-93	76.6018%	1-Jun-96	52.4491%
1-Dec-93	75.9150%	1-Jul-96	51.5709%
1-Jan-94	75.2198%	1-Aug-96	50.6833%
1-Feb-94	74.5160%	1-Sep-96	49.7940%
1-Mar-94	73.8066%	1-Oct-96	48.8951%
1-Apr-94	73.0960%	1-Nov-96	47.9865%
1-May-94	72.3769%	1-Dec-96	47.0762%
1-Jun-94	71.6565%	1-Jan-97	46.1561%
1-Jul-94	70.9275%	1-Feb-97	45.2263%
1-Aug-94	70.1898%	1-Mar-97	44.2902%
1-Sep-94	69.4508%	1-Apr-97	43.3521%
1-Oct-94	68.7030%	1-May-97	42.4042%
1-Nov-94	67.9464%	1-Jun-97	41.4544%
1-Dec-94	67.1884%	1-Jul-97	40.4946%
1-Jan-95	66.4216%	1-Aug-97	39.5248%
1-Feb-95	65.6458%	1-Sep-97	38.5529%
1-Mar-95	64.8643%	1-Oct-97	37.5709%
1-Apr-95	64.0819%	1-Nov-97	36.5788%
1-May-95	63.2904%	1-Dec-97	35.5845%
1-Jun-95	62.4978%	1-Jan-98	34.5800%
1-Jul-95	61.6961%	1-Feb-98	33.5653%
1-Aug-95	60.8854%	1-Mar-98	32.5437%
1-Sep-95	60.0734%	1-Apr-98	31.5180%
1-Oct-95	59.2522%	1-May-98	30.4820%
1-Nov-95	58.4218%	1-Jun-98	29.4417%
1-Dec-95	57.5901%	1-Jul-98	28.3909%
1-Jan-96	56.7490%	1-Aug-98	27.3296%
1-Feb-96	55.8987%	1-Sep-98	26.2640%
1-Mar-96	55.0424%	1-Oct-98	25.0000%
1-Apr-96	54.1848%		

BancBoston Leasing Inc.

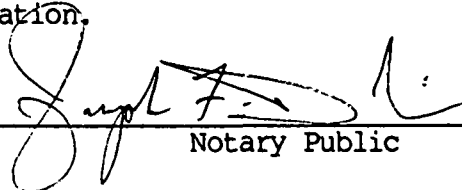
By: *[Signature]*  
Title: VICE PRESIDENT

GWI Leasing Corporation

By: *[Signature]*  
Title: Treasurer

STATE OF MASSACHUSETTS  
COUNTY OF SUFFOLK

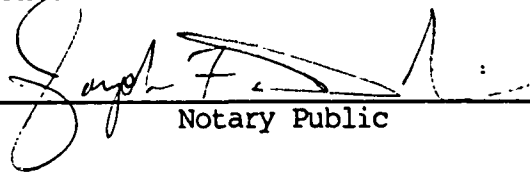
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\_\_\_\_\_  
Notary Public

My commission expires on 12/14/91

STATE OF MASSACHUSETTS  
COUNTY OF SUFFOLK

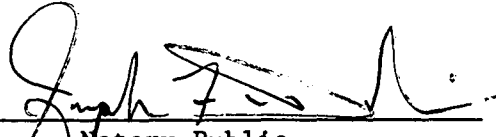
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\_\_\_\_\_  
Notary Public

My commission expires on 12/14/91



CERTIFIED TO BE A TRUE COPY

  
\_\_\_\_\_  
Notary Public

My commission expires on 12/14/91